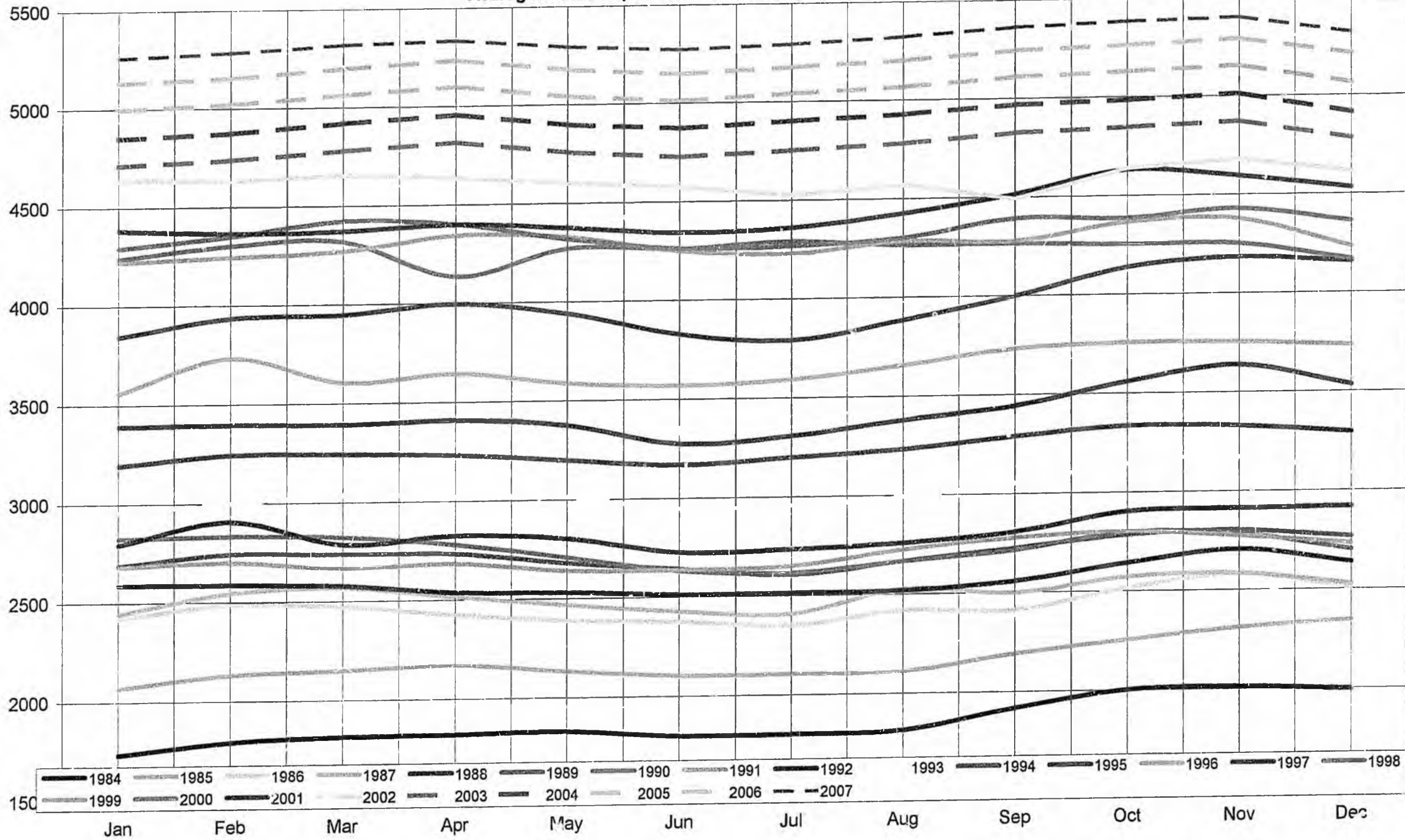


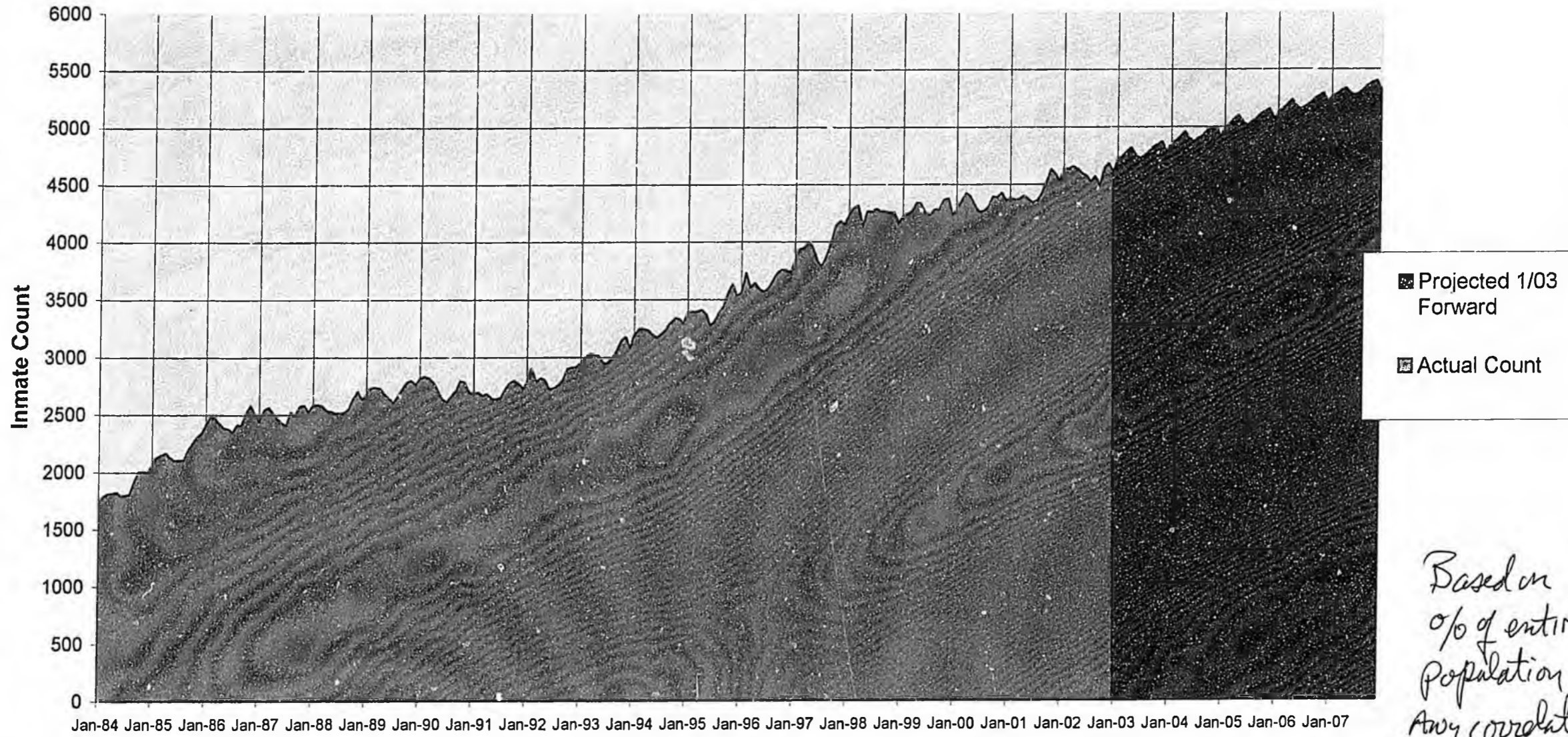
ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11006 HOUSE STATE AFFAIRS

Average Inmate Population 1984 Through December 2002



Inmate Population Statistics



■ Projected 1/03 Forward
■ Actual Count

*Based on
% of entire
population
Any correlation
between total
pop & Inmate pop*

January 28, 2003

Infections in Newly Released Inmates are Rising Concern

By FOX BUTTERFIELD

MOUNT PLEASANT, Mich., Jan. 27 — Marva Johnson was thrilled when her longtime boyfriend, Randy Vallad, was paroled from prison in 1999.

They went back to living together, and once when he had a bad cut on his head, she took care of him. She was splattered with his blood, but the couple did not think anything of it at the time.

It was not until Mr. Vallad was sent back to prison in 2001 for a parole violation that he was accidentally shown his Michigan Department of Corrections medical records. They reported that Mr. Vallad had tested positive for hepatitis C, a blood-borne virus that can cause potentially fatal liver disease, when he was first admitted to prison years before.

"They knew and didn't tell him," Ms. Johnson, 33, said today in this small city in central Michigan. "As a result, they also let him infect me." For the past 11 months she has been taking a powerful, enervating course of drugs for hepatitis C.

Such cases are becoming increasingly common across the nation, as jails and prisons have become giant incubators for some of the worst infectious diseases.

According to a study released today at a conference sponsored by the federal Centers for Disease Control and Prevention, at least 1.3 million inmates released from jail or prison in 1996 were infected with hepatitis C. That was 29 percent of the 4.5 million cases nationwide.

Similarly, newly released inmates accounted for 35 percent of the 34,000 Americans with tuberculosis in 1996, the study found. And newly released inmates accounted for 13 to 17 percent of Americans infected with H.I.V. or AIDS, the study estimated.

The problem has become so acute that health care officials and prisoner rights groups are calling for widespread testing of prison populations for hepatitis C and faster treatment of prisoners.

"This is a public health problem that has been growing and growing, but we are reluctant to do anything about it because these are bad guys," said Dr. Robert Greifinger, a former chief medical officer for the New York State Department of Correctional Services and the author of the study, which was commissioned by Congress and prepared for the Justice Department.

The Centers for Disease Control held a conference of prison medical officers in San Antonio devoted to the issue last weekend. During the conference, the centers said that public vaccination efforts to prevent hepatitis outbreaks should be extended to prisons.

The centers also issued new guidelines urging states to test all prisoners with a history of intravenous

drug use and other risky behavior for hepatitis C. Sharing needles and unprotected sex are common ways the virus is spread.

The problem is not that large numbers of prisoners are contracting hepatitis C while incarcerated, experts say. Most were infected years before. The experts say the high rate of communicable diseases among inmates is a critical issue for two reasons: the danger inmates pose of infecting others when they are released, and the opportunity to treat them that is largely being wasted.

Dr. Greifinger said that Americans tended to forget that most inmates eventually return home. In 2000, about nine million people were released from jail and prison, according to Allen J. Beck, of the Bureau of Justice Statistics, the statistical arm of the Justice Department.

In a sign that the problem is getting more attention, the C.D.C. made public Dr. Greifinger's report today. It had been given to the Justice Department in March 2001, Dr. Greifinger said, but never before released to the public.

In a separate action, the American Civil Liberties Union and two dozen other organizations interested in prison conditions issued a call today for a Congressional investigation into the state of medical care in jails and prisons.

"Correctional systems have buried their heads in the sand because they don't want to know how many prisoners have hepatitis C," said Eric Balaban, a staff lawyer with the National Prison Project of the A.C.L.U.

Russ Marlin, a spokesman for the Michigan Department of Corrections, said, "We are treating hepatitis C in accordance with federal guidelines."

He said that Michigan did not do blood tests of all incoming inmates or all those who engage in risky behavior. "Our position is that indiscriminate testing is not useful," he said. In addition, it would cost \$200 million to test and treat all suspected cases of hepatitis C among Michigan inmates, he said. Even more important, he said, is that the drug treatment — a combination of interferon and ribarvin given over a 6 to 12 month period — is very toxic.

Mr. Marlin said he had no information on why Mr. Vallad was not told he had tested positive for hepatitis C and could not release it even if he did because of the confidentiality of prisoners' medical records.

Mr. Vallad, was originally convicted for fleeing the police when he was stopped for driving with a suspended license. It was not the last of his problems. Today, the police raided the trailer where he lives with his sister and brother, looking for drugs.

It was a bad tip from an informant, the police later said, and they found no drugs. But they detained Mr. Vallad anyway.

Steven Croley, a lawyer for Mr. Vallad and Ms. Johnson, said Mr. Vallad had stumbled on the information that he had tested positive for hepatitis C when he asked to see some of his private medical records compiled by doctors while he was out of prison.

At the time, in 2001, Mr. Vallad had just been sent back to prison because of a urine test that showed evidence of drug use, a violation of his parole.

But the records he received accidentally included pages of his prison medical file reporting on a blood test he had been given during his first admission in 1998.

At the bottom of one page was the notation "Hepatitis C — Positive."

"I said, wait a minute, what's this?" Mr. Vallad recalled. He called Ms. Johnson, who went for a test and discovered she was also infected.

Mr. Vallad, now 42, was never offered any treatment inside prison for hepatitis C. His level of infection has steadily gone up and his health has deteriorated, Mr. Croley said.

Mr. Croley said he will soon bring suits against the Michigan Department of Corrections on behalf of Mr. Vallad and Ms. Johnson.

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STATISTICAL REPORT 1996 - 2001 (Calendar Years)

Gunny
Corrections
Overview file
2-7-03

ALASKA BOARD OF PAROLE

[NOTE: All percentages are rounded to the nearest whole percentage point.]
[NOTE: Statistics are calculated on calendar year basis.]

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Total Full Board Hearings Held	536	562	655	590	595	570
Specials Hearings (see Specials section)	156	195	274	274	320	293
MR Conditions Set		425	648	633	540	598
Preliminary Hearings Held		298	367	430	513	489
				<small>[72% increase from 1997 to 2000]</small>		
Parole Arrest Warrants Issued Statewide <small>(Signed # warrants only - does not reflect actual arrests)</small>		491	515	551	669	633
		<small>Year 2001 by Region: Southeast-45; Northern-154; Southcentral-434</small>				

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
<u>Full Board Hearings Held by Quarter</u>						
Winter	129	135	160	170	142	138
Spring	141	141	158	124	147	153
Summer	132	139	188	152	186	120
Fall	134	147	149	144	120	159
	536	562	655	590	595	570

<u>Total Full Board Hearings Held Each Year</u>	<u>536</u>	<u>562</u>	<u>655</u>	<u>590</u>	<u>595</u>	<u>570</u>
% of Full Board Hearings that are Initial Discretionary	37%	41%	36%	32%	27%	27%
% of Full Board Hearings that are Revocations	51%	43%	49%	56%	63%	66%
% of Full Board Hearings that are Rescissions	3%	2%	4%	5%	4%	3%
% of Full Board Hearings that are Reviews	6%	7%	4%	6%	6%	4%

1996 1997 1998 1999 2000 2001

Hearing Types

# of All Full Board Hearings that are Initial Discretionary	198	228	236	186	161	154
<i>% of All Full Board Hearings that are Initial Discretionary</i>	37%	41%	36%	32%	27%	27%
# of All Full Board Hearings that are Reviews	29	39	28	37	35	22
<i>% of All Full Board Hearings that are Reviews</i>	6%	7%	4%	6%	6%	4%
# of All Full Board Hearings that are Rescissions (all types)	15	13	29	30	21	18
<i>% of All Full Board Hearings that are Rescissions</i>	3%	2%	4%	5%	4%	3%

(For information on Revocations, see next page)

Discretionary Parole Hearing Decisions

# of Initial Discretionary Hearings with Grant decision	80	79	121	95	66	61
<i>% of All Initial Discretionary Hearings</i>	40%	35%	51%	51%	41%	40%
# of Initial Discretionary Hrgs with "Continue" Decision	41	30	31	32	34	23
<i>% of All Initial Discretionary Hearings</i>	21%	13%	22%	17%	21%	15%
# of Initial Discretionary Hrgs with "Deny" Decision				59	61	70
<i>% of All Initial Discretionary Hearings</i>				32%	38%	45%

"Continue" Decisions for All Full Board Hearings

# of "Continue" Decisions (of All Full Board Hearings)	81	68	86	85	95	75
<i>% of All Full Board Hearings with "Continue" Decision</i>	15%	12%	13%	14%	16%	13%

[NOTE: See next page for statistics on all Revocation hearings.]

REVOCATION STATISTICS

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Total Full Board <u>Revocation</u> Hearings Held (Disc. & MR)	272	243	322	335	376	415
	<i>[38% increase from 1996 to 2000]</i>					

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
# of <u>Discretionary Revocation</u> Hearings	28	29	18	28	29	38
% Discretionary Revocation Hrgs of all Revocation Hrgs held	10%	12%	6%	8%	8%	9%
# of <u>Mandatory Revocation</u> Hearings (includes rescissions & reviews)	245	214	304	307	347	377
% of Mandatory Revocation Hrgs of all Revocation Hrgs held	90%	88%	94%	92%	92%	91%

Subsets/Types of Mandatory Revocations Hearings: (does not include Review hearings)

# of MR Revocations & all Rescissions	238 (78%)	282 (81%)	318 (81%)
# of MR Reparole Revocation Hearings	31 (10%)	28 (8%)	33 (8%)
# of Anticipatory MR Revocations	38 (12%)	37 (11%)	42 (11%)
Discretionary Reparole Revocation		1	0

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
# of All Revocation Hrgs Resulting in "Revoke/Deny" Decision	80	131	111	109	115	153
% of All Revocation Hrgs Resulting in " <u>Revoke/Deny</u> " Decision	29%	54%	34%	33%	30%	39%
# of All Revocation Hrgs Resulting in "Reprimand/Warn" Decision	42	25	37	38	51	39
% of All Revocation Hrgs Resulting in " <u>Reprimand/Warn</u> " Decision	15%	10%	11%	11%	14%	10%
# of All Revocation Hrgs Resulting in "Revoke/Reparole" Decision	85	76	126	136	151	144
% of All Revocation Hrgs Resulting in " <u>Revoke/Reparole</u> " Decision	31%	31%	39%	41%	40%	37%
# of All Revocation Hrgs Resulting in "Continue" Decision				52	59	57
% of All Revocation Hrgs Resulting in " <u>Continue</u> " Decision				15%	16%	14%

Specials Hearings

(Definition: Full Board hearings for special requests; parolees do not participate in Specials hearings)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Total # of Specials Hearings Held	156	195	274	274	320	333
	<i>(100 % increase from 1996 to 2000)</i>					
<u># Special Hearings Held by Type:</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Condition Change Request	12	21	14	35	44	24
Anticipatory Waiver	0	2	0	0	3	2
Discr. Rescission Waiver	1	0	1	0	1	1
Discr. Reparole Revoc Waiver	0	1	0	0	1	0
Discr. Revocation Waiver	7	5	13	13	14	19
MR Reparole Revoc Waiver	8	10		3	15	26
MR Revocation Waiver	77	114	178	148	175	166
Reconsideration	27	30	41	37	38	31
Rescission Waiver	17	12	16	21	13	6
Special Medical Parole				2	2	3
Offender Supv. Program(OSP)				5	3	1
Request for Time Served					3	
Dismissed Charges					4	
Special Requests						5
Early Release	7	0	11	10	4	9
	<i>(7grant)</i>		<i>(7grant)</i> <i>(4deny)</i>	<i>(3grant)</i> <i>(7deny)</i>	<i>(3grant)</i> <i>(1deny)</i>	<i>(4grant)</i> <i>(5deny)</i>

Questions to be addressed to Larry Jones, Executive Director, Alaska Board of Parole

Email: lawrence_jones@correct.state.ak.us

[doc: f:\statistics addendum 2001.doc] 2 / 1 / 02

Subject: State Affairs 1/30/03 meeting

Date: Tue, 28 Jan 2003 13:41:57 -0900

From: Ginny Austerman <Ginny_Austerman@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Representative Bruce Weyhrauch <Representative_Bruce_Weyhrauch@legis.state.ak.us>
Representative Jim Holm <Representative_Jim_Holm@legis.state.ak.us>,
Representative Paul Seaton <Representative_Paul_Seaton@legis.state.ak.us>,
Representative Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>,
Representative Nancy Dahlstrom <Representative_Nancy_Dahlstrom@legis.state.ak.us>
Representative Ethan Berkowitz <Representative_Ethan_Berkowitz@legis.state.ak.us>,
Representative Max Gruenberg <Representative_Max_Gruenberg@legis.state.ak.us>,
Jos Govaars <Jos_Govaars@legis.state.ak.us>,
Chris Knight <Chris_Knight@legis.state.ak.us>,
Robin Phillips <Robin_Phillips@legis.state.ak.us>,
Lisa Weissler <Lisa_Weissler@legis.state.ak.us>

Reminder:

House State Affairs Committee meets Thursday morning, January 30, 2003 for the purpose of a Confirmation Hearing for Marc Antrim, Commissioner-Appointee Department of Corrections. I will drop Mr. Antrim's resume' by your office on Wednesday.

All committee members please remember, you will need to sign the "Confirmation Committee Report" prior to leaving the meeting. If you need to leave before the meeting is completed, please signal me and I will get your signature right away.

The meeting is scheduled to begin promptly at 8 a.m.. The confirmation hearing is the only thing on the agenda. The meeting will be teleconferenced if any of your constituents wish to testify, please be sure to advise them to make arrangements with their LIO.

Ginny Austerman

STATE OF ALASKA /

DEPARTMENT OF CORRECTIONS

MEMORANDUM

Commissioner's Office
431 N Franklin, Suite 400
Juneau, Alaska 99801
Phone (907) 465-4652 Fax (907) 465-3390

TO: All Legislators

DATE: January 15, 2003

FROM: Marc S. Antrim, Commissioner

SUBJECT: *Nome Seaside Center Status Report*

The Alaska Department of Corrections operates 13 correctional facilities directly, and 11 halfway houses under contract to private, for-profit and non-profit companies. Cornell Corrections Corporation is the largest contractor with 9 halfway houses, one of which is the Seaside Center in Nome.

- Contract negotiations were underway with Cornell Corrections for a new 5-year contract for the Seaside Center during the previous Corrections administration.
- The Seaside Center employs 13 people, who provide 24-hour supervision for the 48 prisoners in the facility.
- The current contract price is \$76.74 per person, per day.
- Corrections offered a 5% increase to \$80.68. The most expensive contract is the halfway house in Bethel at \$85.17. This would be a \$57,465.60 increase in FY04.
- The cost of living allowance (COLA) recognized by the State is 38% for Bethel and 34% for Nome.
- Cornell's 1st offer was a 27% increase to \$97.48, per person, per day. This would be a \$310,374.10 increase in FY04.
- Corrections offered a 6% increase to \$81.34 and freight consolidation. Staff verified that costs for food, rent, freight, etc., have been stable.
- When Cornell declined to negotiate below the 27% increase, a notice to end the contract was served by Corrections, which expires on 1-31-03.
- Cornell started a public relations campaign indicating that Corrections was simply closing the Seaside Center.

- Mike Addington, Director of Institutions, and Karen Neagle, Cultural Affairs Coordinator, went to Nome on Wednesday, January 8th, and met with the Mayor, members of the city council, and several Native organizations. They explained the problem with the contract negotiations and that the prisoners may need to be moved out of Nome only temporarily until another facility can be opened.

- Discussions were initiated by Addington and Neagle with Kawerak Corporation and Norton Sound, among others, to consider taking over the operation. Norton Sound is interested in exploring options to implement a more comprehensive treatment program at the facility. The facility, under new management, could be in operation within 120-days at which time the prisoners would be moved back to Nome.

- Signing this contract with the 27% increase proposed by Cornell Corrections would have serious implications for the other halfway house contracts up for renegotiation in 2003, as well as serious impacts to the overall Corrections budget.

Corrections would rather have completed the negotiation with Cornell in good faith and entered into another contract to run the existing Seaside Center facility. Making the best of the situation, Corrections has approached Native corporations to consider taking over the operation. Corrections views bringing the Native corporations and the community in as partners to deliver services as a positive result. Providing an improved treatment component in the facility is also seen as a positive step.

If you require any further information, please feel free to contact me directly at 465-4652. Thank you.

Cc: James F. Clark, Chief of Staff
Mike Tibbles, Legislative Director
Frank Homan, Special Assistant
John Manly, Press Secretary

THE
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Cornell/Seaside Center (Nome) (41 Regular 7 Per Diem)

<u>Beds #</u>	<u>Price Per Regular Bed</u>			
41	\$78.74	Current Price	FY03 Increase	FY04 Increase
34 Beds @ \$79.98	(Aggregate)		(181 Days)/SUP	(Increment)
7 Beds @ \$61.00				
7 Beds @ \$10.00				
	\$77.12	0.5%	\$2,819.98	\$5,686.70
	\$77.51	1.0%	\$5,714.17	\$11,523.05
	\$77.89	1.5%	\$8,534.15	\$17,209.75
	\$78.27	2.0%	\$11,354.13	\$22,896.45
	\$78.66	2.5%	\$14,248.32	\$28,732.80
	\$79.04	3.0%	\$17,068.30	\$34,419.50
	\$79.43	3.5%	\$19,962.49	\$40,256.85
	\$79.81	4.0%	\$22,782.47	\$46,842.55
	\$80.19	4.5%	\$25,802.45	\$51,629.25
Agency Offer- 1st /11-15-2002	\$80.68	5% Raise	\$28,496.64	\$57,468.60
	\$80.96	5.5%	\$31,316.82	\$63,152.30
	\$81.34	6.0%	\$34,166.28	\$68,839.00
	\$81.73	6.5%	\$37,030.79	\$74,675.35
	\$82.11	7.0%	\$39,850.77	\$80,362.05
	\$82.50	7.5%	\$42,744.98	\$86,198.40
	\$82.88	8.0%	\$45,584.94	\$91,885.10
	\$83.26	8.5%	\$48,384.92	\$97,571.80
	\$83.65	9.0%	\$51,279.11	\$103,408.15
	\$84.03	9.5%	\$54,099.09	\$109,094.85
	\$84.41	10.0%	\$56,919.07	\$114,781.66
	\$84.80	10.5%	\$59,813.28	\$120,617.90
	\$85.18	11.0%	\$62,633.24	\$126,304.80
	\$85.57	11.5%	\$65,527.43	\$132,140.95
	\$85.95	12.0%	\$68,347.41	\$137,827.65
	\$86.33	12.5%	\$71,167.39	\$143,514.35
	\$86.72	13.0%	\$74,061.58	\$149,350.70
	\$87.10	13.5%	\$76,881.56	\$155,037.40
	\$87.48	14.0%	\$79,701.54	\$160,724.10
	\$87.87	14.5%	\$82,595.73	\$166,560.45
	\$88.25	15.0%	\$85,415.71	\$172,247.15
	\$88.63	15.5%	\$88,235.69	\$177,933.85
	\$89.02	16.0%	\$91,129.88	\$183,770.20
	\$89.40	16.5%	\$93,949.86	\$189,456.90
	\$89.79	17.0%	\$96,844.05	\$195,293.26
	\$90.17	17.5%	\$99,664.03	\$200,979.95
	\$90.55	18.0%	\$102,484.01	\$206,868.65
	\$90.94	18.5%	\$105,378.20	\$212,503.00
	\$91.32	19.0%	\$108,198.18	\$218,189.70
	\$91.70	19.5%	\$111,018.16	\$223,876.40
	\$92.09	20.0%	\$113,912.35	\$229,712.75
	\$92.47	20.5%	\$116,732.33	\$235,399.45
	\$92.86	21.0%	\$119,626.52	\$241,235.80
	\$93.24	21.5%	\$122,446.50	\$246,922.50
	\$93.62	22.0%	\$125,266.48	\$252,609.20
	\$94.01	22.5%	\$128,180.67	\$258,445.55
	\$94.39	23.0%	\$130,980.65	\$264,132.25
	\$94.77	23.5%	\$133,800.63	\$269,818.95
	\$95.16	24.0%	\$136,654.82	\$275,655.30
	\$95.54	24.5%	\$139,514.80	\$281,342.00
	\$95.93	25.0%	\$142,408.99	\$287,178.35
	\$96.31	25.5%	\$145,228.97	\$292,865.05
	\$96.69	26.0%	\$148,048.95	\$298,551.75
	\$97.08	26.5%	\$150,943.14	\$304,388.10
1st Offer- Per RFP Proposal	\$97.48	27.0%	\$153,911.54	\$310,374.10

HOUSE STATE AFFAIRS
AGENCY OVERSIGHT HEARINGS
QUESTIONS FOR THE DEPARTMENT OF CORRECTIONS

1. The in-state maximum capacity for Alaska's fifteen correctional facilities is 2,996 and the emergency capacity is 3,094. In December every facility was at, or over, emergency capacity. All halfway house beds are full, 700 Alaskan prisoners are held in Arizona and nearly 200 prisoners in the Anchorage area are by-passing jails and serving their sentence at home.
 - What is your plan for managing inmate growth?
 - What is your interim plan for avoiding court sanctions and resumed court oversight of the Department of Corrections due to overcrowding?
 - Does the Attorney General believe that the DOC is at risk of resumed court oversight and possible sanctions?
2. Over 200 prisoners in Anchorage are serving all, or part, of their sentences of incarceration at home, on electronic monitoring, or department supervision.
 - Does this administration plan to continue the practice of allowing prisoners to serve sentences at home, rather than in a halfway house or jail?
 - Isn't this practice equivalent to modifying a prisoner's sentence without the permission of the court?
 - What is the difference between a sentence of imprisonment and probation if offenders are allowed to go to work and come home?
3. The Arizona private prison contract is in its eighth year. The D.O.C. has repeatedly testified that the services meet the highest standards of the industry at less cost to the State of Alaska.
 - Does the Department plan to support the development of a privately managed prison in Alaska so that the jobs and revenue bolster the Alaska economy, rather than Arizona?
 - If the Arizona private contract has been so successful, why can't the same services be delivered in Alaska to help contain the costs of in-state correctional services?
 - What is the current statewide average daily operating cost, per bed, for in-state, state operated correctional facilities, as reported to the federal government for reimbursement purposes?
 - What are the current average daily operating costs, per bed, per institution, including programs, health, administration, indirect and per bed capital costs where facilities are not paid off?

4. In 1995 the D.O.C. had seven policy level exempt and partially exempt political appointee positions and one classified service Deputy Director. The Knowles Administration doubled that number adding five special assistants, two assistant directors, another Deputy Director and, perhaps, others exempt, partially exempt and central administration positions.
 - With inmate growth being handled in Arizona, what is the justification for this extraordinary increase in upper management personnel?
 - Does this administration intend on filling all of these positions?
 - If not, which will be eliminated, which will be filled and why?
5. 37% of the inmate population are Alaskan Native, yet only 4% of Correctional and Probation Officers are Alaskan Native.
 - Does the Department have plans to increase Alaskan Native hire and how?
 - What plans does the Department have for reducing the incarceration rate of Alaskan Native Offenders?
6. Bethel and Nome institutional operating costs are artificially high due to the past administrations' practice of allowing urban correctional and probation officers to move to rural regions to acquire "their three high years for retirement". This practice unnecessarily increases the operating budget for decades and displaces local hire. Residents of Nome and Bethel simply cannot gain employment at their own home- town correctional facilities.
 - Will this administration take steps to fix both of these problems?
 - How?
7. Alaska has a practice of offering both prison and jail programs in regional correctional facilities around the State.
 - Wouldn't it be less costly to build a large, centrally located prison and move sentenced felons and long-term misdemeanants out of jails, freeing up beds, eliminating programs and providing only basic jail services at jails and programs at long-term prisons?

**Alaska State Legislature
House of Representatives**

**State Affairs Committee
State Capitol, Room 102**

**Bruce B. Weyhrauch, Chair
Jim Holm, Vice-Chair
Paul Seaton
Mike Hawker
Bob Lynn**

Memo

To: Mr. Jim Clark, Chief of Staff to Governor Frank Murkowski (via fax 465-3532)

From: Representative Bruce B. Weyhrauch, Chairman, House State Affairs Committee

Date: 12/26/02

Re: State Affairs Committee Meetings and Issues

Thank you for meeting with me this week. I look forward to a productive session of the Legislature, and a close working relationship with the Murkowski Administrative to address the many issues before the State of Alaska.

According to Legislature Uniform Rule 20, the House State Affairs Standing Committee has jurisdiction over the programs and activities of the Departments of Administration, Military and Veteran Affairs, Corrections, and Public Safety, and programs and activities of the Department of Transportation and Public Facilities relating to public facilities.

Last month, I met with Governor Murkowski's newly appointed Commissioner of Corrections Marc Antrim, and his special assistant,

and indicated that State Affairs would like to begin its work this coming session by having oversight hearings on his Department. I reviewed a number of issues that members of the Committee may want to discuss with the Commissioner (budget, private prisons, Arizona placement of prisoners, etc), and discussed the possibility of members of the committee and their staff touring the Lemon Creek Correctional Facility in Juneau. I have asked Members of the State Affairs Committee to provide me with information on other issues that they would like the Commissioner to address, and I will forward those issues to the Commission before the hearings.

I anticipate that the Corrections oversight hearings will begin on January 23. Until the Governor appoints Commissioners of Administration, Military and Veteran Affairs, Public Safety, and Transportation, I do not want to schedule oversight hearings at this time, nor do I want to contact the acting Commissioners about oversight hearings. We look forward to working with those new Commissioners as soon as possible.

If you have any questions or concerns, please contact me at whyrock@ptialska.net, or fax it to me at 907 463 5858. You may also call me at 463-5566, or send your questions to me at 114 South Franklin Street, Juneau, AK 99801.

Confirmation Report-Memory Send

Time : Dec-26-02 13:17
Tel line 1 : 9074635858
Name : BRUCE WEYHRAUCH

Job number : 830
Date : Dec-26 13:17
To : 4653532
Document Pages : 02
Start time : Dec-26 13:17
End time : Dec-26 13:17
Pages sent : 02

Job number : 830 *** SEND SUCCESSFUL ***



Memo

To: Mr. Jim Clark, Chief of Staff to Governor Frank Murkowski (via fax 465-3532)
From: Representative Bruce B. Weyhrauch, Chairman, House State Affairs Committee *Bruce Weyhrauch*
Date: 12/26/02
Re: State Affairs Committee Meetings and Issues

Thank you for meeting with me this week. I look forward to a productive session of the Legislature, and a close working relationship with the Murkowski Administrative to address the many issues before the State of Alaska.

According to Legislature Uniform Rule 20, the House State Affairs Standing Committee has jurisdiction over the programs and activities of the Departments of Administration, Military and Veteran Affairs, Corrections, and Public Safety, and programs and activities of the Department of Transportation and Public Facilities relating to public facilities.

Last month, I met with Governor Murkowski's newly appointed Commissioner of Corrections Marc Antrim, and his special assistant.

Bills include one for Whittier prison

ADN 1/29/03

■ **FILED:** More than 90 measures await legislators' return on Tuesday.

The Associated Press

JUNEAU — Among more than 90 bills and resolutions filed in advance of the legislative session that opens

Tuesday is one that resurrects the idea of private prisons in Alaska.

The bill, sponsored by Republican Reps. Norm Rokeberg and Mike Hawker of Anchorage and filed Friday, calls for a 1,200-bed private prison to be built in Whittier. It would also add 450 beds to existing prisons in Fairbanks, Seward, Bethel and the

Matanuska-Susitna Borough.

The bill lets the state enter into a 25-year contract with the city of Whittier, which would contract with a private company to build and run the prison. A similar measure failed to pass the Legislature last year.

"It's my belief that a mix of both private and public facilities are im-

portant to contain costs and provide safe institutions for the people of Alaska," Rokeberg said.

Republican Gov. Frank Murkowski opposed private prisons during his election campaign last fall.

The prison bill was one of 13 filed

See Page B-2, **BILLS**

BILLS: 93 measures were filed before the session

Continued from B-1

Friday.

Other new measures include:

- A bill allowing the state to continue pay and benefits to state employees called to military service by reserves or the National Guard. It is sponsored by Sens. Kim Elton, D-Juneau, and Robin Taylor, R-Wrangell.

- A measure by Sen. Gary Wilken, R-Fairbanks, to establish a teachers' housing loan program.

- A bill requiring a written notice to neighbors and a \$25 permit to spray commercial pesticides. It is sponsored by Sen. Johnny Ellis, D-Anchorage.

- A bill to require a minimum sentence for anyone con-

victed of assaulting teachers or members of the clergy while they are at work. It is sponsored by Rep. Bob Lynn, R-Anchorage.

The measures released Fri-

day bring to 93 the number of bills and resolutions filed in advance of the legislative session.



Go

Lawmakers introduce legislation for Whittier private

New prison would hold 1,200 beds; bill would add 450 other beds to state system

THE ASSOCIATED PRESS

Two Anchorage lawmakers are sponsoring a bill calling for a 1,200-bed private prison to be built in Whittier.

Republican Reps. Norm Rokeberg and Mike Hawker filed the bill Friday that also would add 450 beds to existing prisons in

Fairbanks, Seward, Bethel and the Matanuska-Susitna Borough.

The bill lets the state enter into a 25-year contract with the city of Whittier, which would contract with a private company to build and run the prison. A similar measure failed to pass the Legislature last year.

"It's my belief that a mix of both private and public facilities are important to contain costs and provide safe institutions for the people of Alaska," Rokeberg said.

Republican Gov. Frank Murkowski came out in opposition to private prisons during his election campaign last fall. Legislative leaders have said they expect that opposition may kill any private-prison legislation.

The prison bill was one of 13 filed Friday, prior to the Tues-

day's start of the legislative session.

Other new measures include:

- A bill allowing the state to continue pay and benefits to state employees called to military service by reserves or the National Guard. It is sponsored by Sens. Kim Elton, a Juneau Democrat, and Robin Taylor, a Wrangell Republican.

- A measure by Sen. Gary Wilken, a Fairbanks Republican, to establish a teachers' housing

loan program.

- A bill requiring a written notice to neighbors and a \$25 permit to spray commercial pesticides. It is sponsored by Sen. Johnny Ellis, an Anchorage Democrat.

- A bill to require a minimum sentence for anyone convicted of assaulting teachers or members of the clergy while they are at work. It is sponsored by Rep. Job Lynn, an Anchorage Republican.

- Bills giving the Legislature veto power over any attempt to

extend / through they are Republican 2002 a passed Tony Kn time.

The n bring to and rest of the le;

DOT: New division created for Marine Highway; new office set up for aviation

Continued from Page A1

to receive more attention from the department's top management."

State lawmakers and the Southeast Conference - an organization that advocates for economic development in Southeast, including its transportation systems - have been pushing for a DOT reorganization in the Legislature for several sessions.

During the last legislative session Republican Sens. Jerry Ward of the Kenai Peninsula and Robin Taylor of Wrangell authored a bill that would have created a marine highway authority outside of DOT. The authority would have been given 500,000 acres of land to generate revenue, but the measure never made it to a floor vote in the Senate.

The ferry system also used to be its own division within DOT with a separate director. In 1997, due to budget cuts, that division was merged with DOT's Southeast regional office and the director's position was eliminated.

Southeast Conference Executive Director Loren Gerhard said

Murkowski's reorganization plan would provide more user input into ferry schedules and the allocation of vessels and funding.

"One of the primary objectives is to apply more public process in terms of how policies and priorities are set," Gerhard said. "We need a business plan, really."

Gerhard said the organization has worked closely with the administration in the DOT reorganization.

Shortly after the November election, the Southeast Conference was approached by the administration to help with the reorganization, Gerhard said. He noted that the administration implemented most of the group's requests, but said the organization eventually would like to see a board of directors with ultimate authority over the ferry system.

Capt. George Capacci, general manager for the Alaska Marine Highway System, said he is uncertain of the details of the reorganization, but added he supports it if it improves service.

"We've always been open to organizational improvements," Capacci said. "I applaud the statewide representation; it's not

just the Southeast marine highway system, it's the marine highway system for the entire state."

Murkowski spokesman John Manly said he's not sure whether Capacci will be elevated to the division director's position. Manly said that decision likely will be left to the new DOT commissioner.

The reorganization of DOT came two days after Murkowski ordered a reorganization of the Department of Military and Veterans Affairs.

Under that administrative order a deputy commissioner will oversee disaster response and anti-terrorism duties.

More changes within governmental departments are also expected in the Department of Community and Economic Development within the next few weeks.

Manly said Cordova Mayor Margy Johnson, who was appointed on Saturday, will act as a new director in DCED TO oversee other divisions within the department.

• Timothy InKebarger can be reached at timothy@juneauempire.com.

OVERVIEW:

DEPT. OF

TRANS-

PORTATION

3/16/03

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA 99801-1182

(907) 465-2028
FAX (907) 465-2273

STATE AFFAIRS COMMITTEE

Committee Schedule

March 6, 2003

Meeting time 8 a.m. – 10 a.m.
State Affairs Committee Room 102

Thursday, March 6

OVERVIEW – DEPARTMENT OF TRANSPORTATION – PUBLIC FACILITIES PORTION

- *+ HB 5 INSURANCE DISCRIMINATION
BY CREDIT RATING

- + = HB 18 PARENTAL LIABILITY FOR
CHILD'S DAMAGE

- *+ HB 92 CLERGY TO REPORT CHILD
ABUSE

BILLS PREVIOUSLY HEARD

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE
March 6, 2003

COMMITTEE CALENDAR

Overview of Department of Transportation/Public Facilities

TAPE

01-, Sides A & B

CALL TO ORDER

REPRESENTATIVE BRUCE WEYHRAUCH, Chair, convened the House State Affairs Standing Committee meeting at 8:01 a.m.

PRESENT

Committee members present were Representatives Weyhrauch, Holm, Lynn, Dahlstrom, Berkowitz, Seaton and Gruenberg.

SUMMARY OF INFORMATION

JOHN MC KINNON, Deputy Commissioner of Transportation for Public Facilities (DOTPF), explained the definition of Public Facilities as those buildings in the state that are owned and operated by the State of Alaska. Presently the Court System, the Department of Administration and the Department of Transportation have jurisdiction over state owned facilities within Alaska.

REPRESENTATIVE HOLM initiated a discussion on whether the Court System maintains any of their own buildings. The response from Mr. McKinnon was that the Court System, though they own their buildings, quite often contract with Administration or DOTPF to manage them as they are not set up to maintain their buildings.

REPRESENTATIVE GRUENBERG'S questioned Mr. McKinnon as to whether DOTPF is in charge of the Capitol Building. Mr. McKinnon answered that the Capitol Building is managed by Legislative Affairs.

REPRESENTATIVE GRUENBERG asked if DOTPF is in charge of highway maintenance. Mr. McKinnon responded in the affirmative, he went on to clarify that highway maintenance is under his purview. He introduced Nancy Slagle and George LaVasser, acting statewide maintenance operations engineer from Valdez.

Post-it® Fax Note	7671	Date	1/12/05	# of pages	15
To	John Manley	From	Brien Daugherty		
Co./Dept.	DOT	Co.	Leg. Ref. Lib.		
Phone #		Phone #	3808		
Fax #	586-8365	Fax #			

The mission of the statewide facilities maintenance and operations is to improve the quality of life for Alaskans by cost effectively providing environmentally sound and reliable public facilities. It is to benefit the traveling public in Alaska communities through sound and effective leasing of property management practices at the state's airports and harbors.

Mc KINNON went on to say that there are three separate regions in the state. Central, northern and southeast each region is responsible for the maintenance of their respective facilities. The facilities components furnish basic services, utilities such as electricity, water/sewer, waste disposal, janitorial. The facilities component also provides preventative and routine maintenance and repairs remodeling and major maintenance of all state owned facilities. DOT's component of this maintains and operates 618 state owned buildings with over 2.6 million sq. ft.. This square footage is only 37% - 39% of the total square footage of space used by the State of Alaska. Budget appropriations is approximately \$12 million annually with 79 employees to maintain and operate the facilities. In October of 2000 a number of unoccupied state-owned buildings were transferred to the Department of Administration for their use and maintenance. Admin. Contracts back to DOTPF for the routine as well as major maintenance for many of their buildings. Many of the buildings transferred to Admin. are multi-agency use. DOTPF administers over 200 contracts and work orders for construction, maintenance and janitorial projects. If there is not in-house expertise they contract all construction, maintenance and janitorial projects out. Compliance with the Americans With Disabilities Act and the Resource Conservation Recovery Act is a major part of DOTPF's workload.

The key issues for DOTPF are the maintenance of the facilities. Lack of maintenance in any facility results in condemnation: in the last two years 4 maintenance stations were condemned due to lack of major maintenance on an aging facilities. One of those is scheduled for replacement this year. The Department has identified \$45 - 55 million of a backlog of deferred maintenance. Door replacements, window replacements, roof replacements electrical upgrades, fuel tank replacements, installation of oil and water separators, safety issues such as the replacement of overhead cranes and hoists and repair and replacement of heating systems. Projects are prioritized by 1) Health and safety, 2) Code Compliance.

REPRESENTATIVE HOLM asked about the budget process that should include maintenance of their facilities but doesn't. He suggested that in DOTPF's budgeting process Mr. McKinnon add what monies are needed for repair and maintenance. Rep. Holm strongly expressed his opinion on the importance of asking the Legislature for annual maintenance and repair funding rather than letting the buildings fall into ruin and require replacement. Mr. McKinnon stated his agreement to Rep. Holm's statements and expressed a desire to have DOTPF begin now to include repair and maintenance in the budgeting process.

REPRESENTATIVE GRUENBERG commented that since both chairs of Transportation and State Affairs here today maybe now would be a good time to introduce legislation requiring repair and maintenance be included in the annual budgeting process.

An additional question pertaining to bonding for repair and maintenance was asked by Rep. Gruenberg. Mr. McKinnon responded that he thinks it would be good to include a certain amount in the budget for maintenance costs for facilities. After building facilities, it is the obligation of the state to maintain them, regardless of what department of the state being discussed. In the budget process when the departments and the legislature are looking for places to cut, repair and maintenance is an easy place to start. The public is not affected as much by low maintenance as are the employees who use the buildings. Bonding for repair and maintenance would be a call of the Legislature. In 1997/98 there was a deferred maintenance task force that identified a large number of needs for repair and maintenance throughout the state – largely for education facilities (rural and urban school, etc.) Due to the high cost of this item, nothing ever came of it.

REPRESENTATIVE GRUENBERG asked why there are so many departments owning buildings. Is it not more efficient to have one department in charge to standardize procedures, standardized personnel with expertise and get the economies of some scale and coordination. MR. Mc Kinnon replied that it would make a lot of sense to do something like that. DOTPF is in the business of building and maintaining highways and buildings. The largest issues facing DOTPF for not funding repair and maintenance are safety issues for employees and the public who enter the buildings. Most rural maintenance shops have had a safety assessment done in the recent past. It was discovered that 4 of them were in serious danger collapse, totally because of lack of maintenance. Some of the state maintenance shops date from the 1940s.

REPRESENTATIVE DAHLSTROM commented about the \$45 – 55 million in the deferred maintenance and inquired if Mr. McKinnon is aware of the dollar amount of work that needs to be done right now (buildings in a critical status) or is the dollar amount he quoted all inclusive for all facilities. His response was that the absolutely essential things that are life/safety issues are required by law such as ADA (Americans with Disabilities Act) are taken care of by DOTPF with funds they scrape up. The funding need reflected in the \$45 – 55 million is prioritized, cosmetic work is not a priority unless it also will extend the life of a facility.

REPRESENTATIVE DAHLSTROM also asked if the state was being fined for not maintaining facilities. Mr. McKinnon stated that safety issues such as boiler and furnace annual inspections are completed and rarely do they not pass inspections. Mr. McKinnon went on to discuss improvements that have been made to many public facilities including energy saving projects statewide. Replacing lighting fixtures in an office building with more efficient fixtures has about a 3 ½ year payback on the costs of materials and labor. There are several DOTPF buildings are in the process of receiving upgrades at this time.

REPRESENTATIVE GRUENBERG asked the chair's pleasure in looking into the idea of putting together some legislation or good public policy that would help this department along.

REPRESENTATIVE HOLM would like to reference a letter to Mr. McKinnon with further questions and then review the response. Rep. Holm offered to share that response with the rest of the committee members.

REPRESENTATIVE SEATON had a question on state equipment leases – the equipment lease arrangement is such that all heavy equipment is leased from the state for 10 years and at the end of that time they had paid for the entire unit in that 10 year period, but at the end of the 10 years, they do not have the piece of equipment to sell or do anything else with. There is also a \$40 per hour maintenance charge that the agencies pay to the state rather than the standard \$28 per hour. Seems to be very inefficient and costly for the departments to pay interdepartmentally. Is there a way to allow each region to purchase their own equipment or work it out to pay less for the maintenance. This makes for a large tap on their budget for no real gain. Davis-Bacon requirements dictate a higher rate be charged on equipment repair. Big drain on budgets regionally. Rep. Seaton also asked about a fuel contract for state vehicles in order for the state not to pay a higher rate due to pump prices being charged for a very large portion of the state fleet.

Mr. McKinnon's response was that the state equipment fleet is not a moneymaker, it is designed to be a break even program. Pay for the use of the equipment and build up a replacement fund to replace the equipment. Costs of new equipment currently exceed the money sitting in the lease account i.e., original cost of a grader is \$150,00 and the replacement cost 10 years later is \$220,000. By using a competitive bidding process, the state ends up with several different types of equipment and manufacturers and it is a difficulty in maintaining parts and training maintenance staff. Nancy Slagle, Director of Administrative Services, DOTPF. Responded to Rep. Seaton's comments: State Equipment Fleet Headquarters do contract with a fuel provider. It takes about \$.10 off of the pump price for state vehicles.

REPRESENTATIVE SEATON stated that last year state research vessels were not able to dovetail onto the contract that the Marine Highway System utilizes. Losses of about \$40,000 were realized due to the fact that those vessels were not able to use the same contract as the Marine Highway. Ms. Slagle responded that Rep. Seaton probably is correct that the contract is more than likely with a limited number of agencies. There is great concern about this and the department would look into utilizing the state contract with other departments.

GEORGE LAVASSER, Maintenance and Operations Manager for Southcentral Alaska was introduced to the Committee by Mr. McKinnon. Mr. LaVasser, worked the area from Cordova to Delta for almost 30 years is now filling in on an interim basis for the State Maintenance Engineer.

REPRESENTATIVE WEYHRAUCH thanked everyone for coming and speaking before the committee. He spoke to Rep. Gruenberg's comment about the possible need to have the committee get together and working on legislation that would be of benefit to DOTPF.

REPRESENTATIVE GRUENBERG suggested that the chairs of State Affairs and Transportation as well as the staff of the committee and their staff get together and see how we can help as a committee. Rep. Weyhrauch stated that he would prefer to work on this project as a committee as a whole before going to a sub-committee.

REPRESENTATIVE GRUENBERG listed several items he had concerns about 1) should there be one department in charge of public facilities 2) should there be a maintenance component as part of the budget requirements (revisit the Deferred Maintenance Task Force)

REPRESENTATIVE WEYHRAUCH voiced his opinion that since Rep. Holm and Rep. Gruenberg both have concerns it is important to get these questions and responses to the committee so that we can get the information in front of the committee so it can move forward.

Adjourned

1 (b) The legislature intends to measure the success of the authority in achieving its
 2 mission by considering each of the following measures as compared to the previous five
 3 years:

4 (1) the amount of revenue from land and cash;

~~_____~~ income disbursed for mental health programs;

~~_____~~ and the amount of money from mental health trust

—Missions and Measures
 Department of Transportation – Public Facilities

8 **Article 14. Department of Transportation and Public Facilities.**

9 * **Sec. 140. Department of Transportation and Public Facilities.** The mission of the
 10 Department of Transportation and Public Facilities is to develop, operate, maintain, and
 11 manage facilities, vehicles, and transportation modes.

12 * **Sec. 141. DOT/PF - Office of the Commissioner.** (a) The mission of the Office of the
 13 Commissioner is to provide support and policy direction to the divisions within the
 14 department.

15 (b) The legislature intends to measure the success of the office in achieving its
 16 mission by considering the percentage of

17 (1) divisions that reach assigned performance measures;

18 (2) state national highway system lane miles of road that meet standards of the
 19 American Association of State Highway Transportation Officials;

20 (3) requested engineering firm audits and desk reviews completed in the
 21 previous fiscal year;

22 (4) required compliance reviews for responsiveness to disadvantaged business
 23 enterprise and on-the-job training contract requirements completed;

24 (5) the average time taken to respond to complaints and questions that have
 25 been elevated to the commissioner's office.

26 * **Sec. 142. DOT/PF - Division of Administrative Services.** (a) The mission of the
 27 Division of Administrative Services is to support the department's operations with
 28 administrative support and information technology.

29 (b) The legislature intends to measure the success of the division in achieving its
 30 mission by considering

31 (1) whether the average time for payment to vendors is 29 days or less;

1 (2) how long it takes the division to process a purchase request before the
2 order is placed;

3 (3) the percentage of protests and claims appealed to the commissioner that
4 courts overturned during the fiscal year;

5 (4) the percentage reduction in payroll calculation errors.

6 * **Sec. 143. DOT/PF - Division of Statewide Planning.** (a) The mission of the Division
7 of Statewide Planning is to optimize state and federal investment in transportation projects.

8 (b) The legislature intends to measure the success of the division in achieving its
9 mission by considering the

10 (1) percent and dollar value of planned projects that are constructed;

11 (2) percentage of required federal planning, programming, and data collection
12 completed and accepted by the United States Department of Transportation on a federal fiscal
13 year basis;

14 (3) number of motor vehicle crashes during the fiscal year at which serious
15 injury or fatality occurred.

16 * **Sec. 144. DOT/PF - Division of Statewide Design and Engineering Services.** (a) The
17 mission of the Division of Statewide Design and Engineering Services is to develop projects
18 that improve Alaska's transportation and public facilities infrastructure.

19 (b) The legislature intends to measure the success of the division in achieving its
20 mission by considering the

21 (1) percentage of federal highway funds obligated in the previous federal
22 fiscal year;

23 (2) percentage of projects in the capital budget that have been bid in the year
24 programmed;

25 (3) percentage of total project costs spent on project development by the
26 department and by private contractors performing design and engineering services;

27 (4) percentage difference between final project estimates and construction
28 bids;

29 (5) ratio of new projects bid to completed projects closed out during the fiscal
30 year, reported by region;

31 (6) percentage of the design and engineering work of the division that was

1 performed by private contractors;

2 (7) number of miles of roads that have a level of service rating of E or F
3 compared to the prior year.

4 * **Sec. 145. DOT/PF - Division of Construction and CIP Support.** (a) The mission of
5 the Division of Construction and CIP Support is to administer state construction projects.

6 (b) The legislature intends to measure the success of the division in achieving its
7 mission by considering the percentage of the total construction costs that were spent on

8 (1) contract administration;

9 (2) change orders.

10 * **Sec. 146. DOT/PF - Public facilities.** (a) The mission of the department with respect to
11 public facilities is to manage, operate, and maintain state public facilities.

12 (b) The legislature intends to measure the success of the department in achieving its
13 mission with respect to public facilities by considering

14 (1) whether the net value of facilities deferred maintenance increases or
15 decreases annually;

16 (2) the percentage of facility mechanical systems that pass safety inspections
17 each year;

18 (3) the percentage of rural airport leases that are renewed or newly leased at
19 fair market value during the fiscal year;

20 (4) the transfer of state-owned ports and harbors to local control.

21 * **Sec. 147. DOT/PF - Equipment fleet.** (a) The mission of the department with respect to
22 the equipment fleet is to allocate, maintain, and manage state-owned vehicles, equipment, and
23 attachments for safe and appropriate use.

24 (b) The legislature intends to measure the success of the department in achieving its
25 mission with respect to the equipment fleet by considering

26 (1) whether 85 percent of the fleet wet rentals are returned to the division as
27 scheduled for preventive maintenance on or before June 30 of the fiscal year;

28 (2) the average down time for light duty, actively used equipment in urban
29 areas;

30 (3) the number of locations of the state equipment fleet whose rates are equal
31 to or less than the rental rates published in industry guide books.

1 * **Sec. 148. DOT/PF - Division of Measurement Standards and Commercial Vehicle**
 2 **Enforcement.** (a) The mission of the Division of Measurement Standards and Commercial
 3 Vehicle Enforcement is to protect the traveling public, preserve the state's transportation
 4 infrastructure, and protect consumers' interests in weight and measurement transactions.

5 (b) The legislature intends to measure the success of the division in achieving its
 6 mission by considering

7 (1) safety inspections per full-time-equivalent employee of the division;

8 (2) weighing and measuring device inspections conducted per full-time-
 9 equivalent employee of the division.

10 * **Sec. 149. DOT/PF - Highway maintenance and operations.** (a) The mission of the
 11 department with respect to highway maintenance and operations is to maintain, protect, and
 12 control the state's highway system.

13 (b) The legislature intends to measure the success of the department in achieving its
 14 mission with respect to highway maintenance and operations by considering

15 (1) the number of miles of gravel roads that are surfaced with chip seal, hot
 16 mix, or high float asphalt for the first time, reported regionally;

17 (2) the percentage of highway and airport lane miles per full-time-equivalent
 18 employee compared to the average of member states of the Western Association of State
 19 Highway and Transportation Officials;

20 (3) the number of miles of road maintenance for which responsibility is
 21 transferred to local governments;

22 (4) whether the department fully implements the maintenance management
 23 system statewide by June 30, 2003.

24 * **Sec. 150. DOT/PF - Aviation.** (a) The mission of the department with respect to
 25 aviation is to improve, maintain, and operate state and international airports.

26 (b) The legislature intends to measure the success of the department in achieving its
 27 mission with respect to aviation by considering

28 (1) the percentage of applicable rural airports that maintain the pavement
 29 condition index (PCI) at 70 for runways and 60 for taxiways and aprons;

30 (2) whether the department completes the environmental impact statement
 31 phase on the Ketchikan Airport Access by December 31, 2002;

1 (3) the percentage of private maintenance contracts at noncertified airports
2 compared to the total number of noncertified airports;

3 (4) whether the department maintains the 100 percent pass level of annual
4 federal airport certification inspections for response and safety standards set out in federal
5 aviation regulations;

6 (5) the percentage of change in cargo landings at certified maximum gross
7 take-off weight at the international airports during the last three years;

8 (6) whether the department completes the Gateway Alaska Terminal
9 Redevelopment Project by September 1, 2004;

10 (7) the percentage of airports that have a Federal Aviation Administration
11 approved airport layout plan.

12 * **Sec. 151. DOT/PF - Marine Highway System.** (a) The mission of the Alaska Marine
13 Highway System is to assist in meeting the transportation needs of the traveling public and the
14 communities served by the system while prioritizing and maximizing access to service by
15 Alaska residents.

16 (b) The legislature intends to measure the success of the system in achieving its
17 mission by considering the

18 (1) percentage of times that vessels depart on time;

19 (2) revenue per rider mile divided by the operational costs per rider mile,
20 calculated including and excluding fuel cost;

21 (3) total ridership, including passengers and vehicles, compared to the five-
22 year ridership average;

23 (4) average onboard revenue per passenger, including cabin occupancy, food,
24 beverage, and other sources of revenue;

25 (5) percentage of persons served who are satisfied customers;

26 (6) development of a reservation and pricing system that prioritizes use by
27 Alaska residents.

28 **Article 15. University of Alaska.**

29 * **Sec. 152. University of Alaska.** (a) The mission of the University of Alaska is to
30 respond to the educational needs of all Alaskans and to enhance Alaska's economy by
31 fostering and promoting



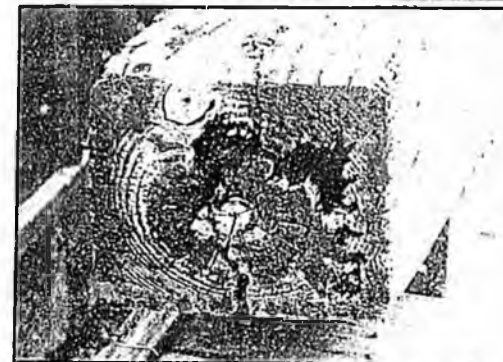
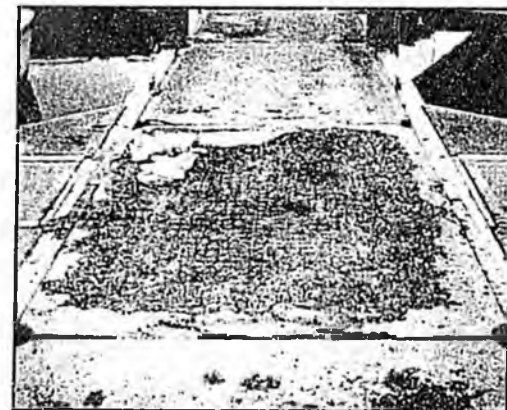
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Juneau, AK 99801
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State assets in decline

A report on deferred maintenance

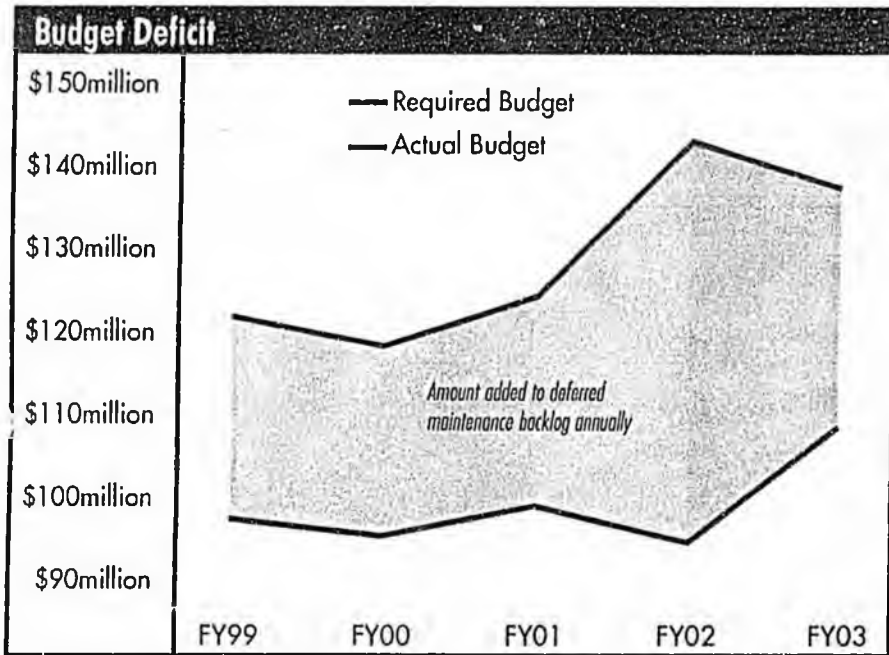


Alaska Department
of Transportation &
Public Facilities



Overview

For many years now, the Alaska Department of Transportation and Public Facilities (DOT&PF) received approximately \$98 million a year to maintain all of the state-owned highways, airports, harbors and buildings under its control. The true cost of maintaining all of those assets to keep their condition at current levels is about \$127 million per year. This short funding of maintenance requires the department to defer much needed maintenance until the next year. Over time, this backlog has grown to the point that some of these assets are deteriorating beyond economical repair.



The result of deferring maintenance is, in the worst case, the closing of four maintenance stations due to structural integrity and foundation failure, and in the best case, inconvenience to the traveling public.

The statewide deferred maintenance needs for highways, airports, harbors and buildings totals \$375,431,200. Since the department's

operating budget is insufficient to cover the annual need, nothing can be committed toward the deferred maintenance, and the list grows bigger each year. To provide an acceptable level of safety and service on

the National and State transportation system the department needs more funds to address the infrastructure and facility needs.

Alaska has a wide range of climates from rain forest in the Southeast to arctic desert north of the Brooks Range. Weather is a major factor in deterioration and destruction of the infrastructure and facilities. Icy conditions, heavy snowfall, the use of traction devices like tire chains and studs coupled with movement of the subsurface due to frost heaving accelerates the destruction of our infrastructure. Continuing to defer maintenance will result in a significantly reduced level of service to the traveling public, noncompliance with safety standards and ultimately more infrastructure failure.

Routine preventative maintenance has proven to reduce operating cost and extend the lifecycle of infrastructure and facilities. Routine preventative maintenance benefits to the public can be measured by improvements in quality of life, safety and the inter mobility of the transportation system.

The following pages depict statewide, regional and specific deferred maintenance needs.

Highways	\$ 218,784.8
Aviation	\$ 39,722.3
Public Facilities	\$ 69,186.6
Harbors	\$ 37,953.5
Total	\$ 365,647.2

Thousands of Dollars

Joseph L. Perkins, P.E.
Commissioner, Alaska DOT&PF

highways

Highways deferred maintenance is something that most people get to experience first-hand everyday. From major rutting and potholes to bare gravel roads and damaged guardrail, the signs of deferred maintenance are all along Alaska's roads.

This deferred maintenance has direct costs to the public – reduced safety, increased travel times, and increased need for automobile repairs. These factors also affect the cost of goods. It costs more for commercial trucks that transport goods to drive poorly maintained roads. That means that you pay more for everything from groceries to gasoline.



Above: Typical sign damage along an Alaska highway

Right: Frost heave damage on Richardson Highway



Deferred maintenance along Alaska's highways includes all of the following restoration and preservation efforts:

- pavements repairs
- bridge repairs
- gravel surfaces
- guardrails/fences/barriers
- shoulders/slopes/ditches
- drainage
- signs
- paint striping
- lighting
- vegetation management (brush clearing)
- facilities
- environmental management

In the past few years, the federal government has increased the amount of money available to the department to spend on preventive maintenance activities like bridge repair and pavement rehabilitation. These activities have allowed the department to repair some of the worst deferred maintenance.

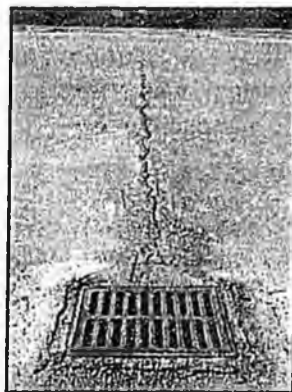
However, these funds fall short of the amount needed to keep Alaska's highways from deteriorating beyond current levels.

Top Three Most Expensive Highway Deferred Maintenance Activities	
Northern	
Bridges Repairs	\$ 52,557.9
Pavement Repairs	\$ 28,791.5
Environmental Management	\$ 18,517.6
Central	
Pavement Repairs	\$ 57,594.9
Bridges Repairs	\$ 14,553.8
Environmental Management	\$ 8,459.6
Southeast	
Pavement Repairs	\$ 6,265.9
Shoulders/Slopes/Ditches	\$ 2,434.0
Gravel Surfacing	\$ 2,423.1
<i>Thousands of Dollars</i>	

aviation

Another component of Alaska's transportation system that has suffered from a lack of maintenance is Alaska's airports. Many Alaskans don't routinely notice this. However, for those who live in rural Alaska and rely on Alaska's aviation system for basic services, maintenance is critical to their health and that of their communities.

Poor maintenance also affects the safety and security of Alaska's airports. Runways with drainage problems, potholes, and poorly maintained runway lighting directly affect the safety of pilots and passengers. Damaged security fencing allows humans and animals, such as moose, to inadvertently wander onto runways. Improper vegetation management affects the usefulness of the full length of the runway.



Runway drainage damage at Haines Airport

Maintaining airports, particularly runways, is similar to maintaining highways. It is critical that surfaces be kept drained and dry, that potholes are properly patched, and that brush is cleared on a routine basis.

Top Three Most Expensive Airport Deferred Maintenance Activities

Northern

Pavement Repairs	\$	6,646.4
Environmental Management	\$	4,274.7
Drainage	\$	2,475.3

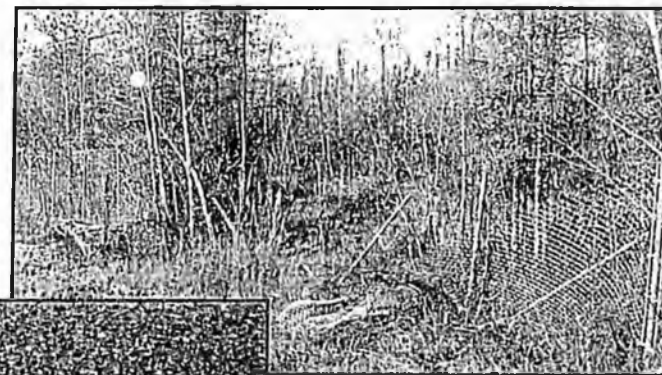
Central

Pavement Repairs	\$	13,509.9
Fencing	\$	3,997.3
Environmental Management	\$	1,984.4

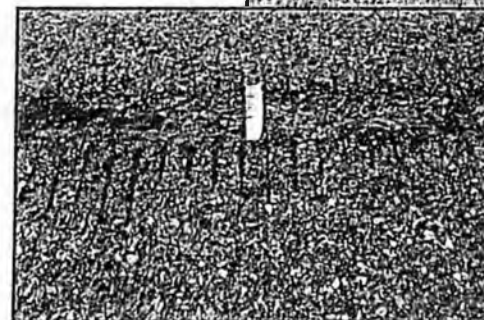
Southeast

Pavement Repairs	\$	740.5
Shoulders/Slopes/Ditches	\$	287.6
Gravel Surfacing	\$	286.4

Thousands of Dollars



Above: Damaged airport security fencing



Left: Runway crack at Yakutat Airport

public facilities

In addition to roads, airports and harbors, the department is responsible for maintaining 603 facilities ranging from sand storage sheds to ferry terminals. The bulk of these buildings are airport and highway maintenance facilities. These facilities are critical to the department's mission to provide safe, efficient transportation systems.

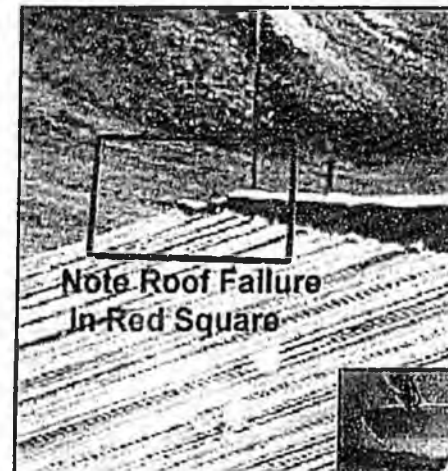
A prime example of the effect of deferred maintenance of facilities is the unsafe conditions at four maintenance stations: Chandalar, East Fork, Willow and Nome. A recent structural evaluation of all four buildings determined they are unsafe to occupy due to structural integrity and foundation failure. As a result, the department has moved operations to temporary structures at or near those sites.

Deferred Maintenance By Region	
Northern	\$ 37,460.4
Central	\$ 21,685.0
Southeast	\$ 10,041.2
Thousands of Dollars	

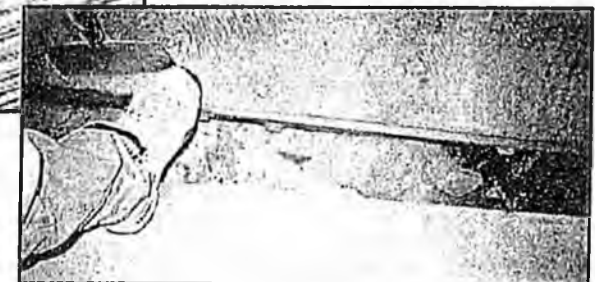
Right: Foundation and floor settlement at Chandalar Maintenance Facility



Facilities Closed Due To Safety			
Station Name	Date Vacated	Reason Vacated	Replacement Cost
Chandalar	Aug-01	Foundation Failure	\$ 5,598.4
East Fork	Aug-01	Structural Integrity	\$ 6,187.9
Nome	Spring-02	Structural Integrity	\$ 5,150.0
Willow	Aug-01	Structural Integrity	\$ 4,386.9
			Thousands of Dollars



Above: Major roof damage at East Fork Maintenance Facility



Right: Foundation failure at Willow Maintenance Facility

harbors

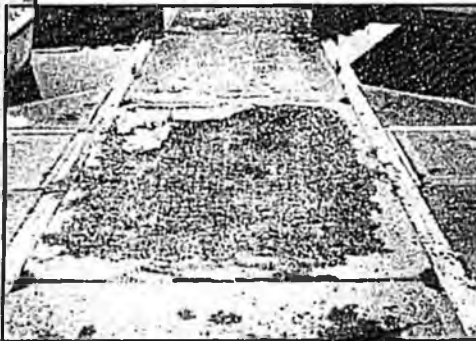
Alaska's harbors constructed in the '60's and '70's, and '80's are in need of replacement or major renovations. The \$48 million backlog of deferred maintenance grows by about \$3.2 million each year.

Alaska's harbor users pay \$6 million per year to the State through the marine fuel tax. The marine fuel tax is an appropriate source of funding for harbor deferred maintenance.

DOT&PF supports the preservation of existing facilities through the transfer of state facilities to local ownership. If a local community is willing to accept ownership, DOT&PF will evaluate the condition of the facility, prepare an estimate, and support an appropriation for sufficient funds for the community to make the needed repairs and renovations.

The DOT&PF also receives a small appropriation for deferred maintenance statewide to preserve and maintain remote and functionally deficient facilities.

Together this focus has made significant improvements to the overall condition of the public's harbors and has transferred 21 facilities to local control.



Above: Concrete damage at Valdez Harbor
Left: Damaged Harbor Piling

Harbors with funding in proposed Harbor Deferred Maintenance Bill

Location	Cost
Whittier (1 harbor)	\$ 2,449.0
Valdez (1 harbor)	\$ 3,212.0
Seldovia (1 harbor)	\$ 2,628.0
Petersburg (3 harbors)	\$ 3,729.0
Ketchikan (5 harbors)	\$ 3,938.0
Sitka (3 harbors)	\$ 2,234.5
Cordova (1 harbor)	\$ 4,876.0
Klawock (1 harbor)	\$ 896.0
Juneau (7 harbors)	\$ 7,119.0
Wrangell (5 harbors)	\$ 3,492.0
Yakutat (1 harbor)	\$ 526.0
Hoonah (2 harbors)	\$ 2,854.0
TOTAL	\$ 37,953.5

Thousands of Dollars

This proposal, if approved, will complete the transfer of 31 of Alaska's public harbor assets from state to local government and make the facilities safe and functional for many years to come.

EO

107

(File 1 of 3)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2003

SUBJECT: Executive Order 107 (Work Order No. 23-GS1071\A)

TO: Representative Paul Seaton

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your request for information regarding Executive Order 107 (cited herein as EO 107).

BACKGROUND. Executive Order 107 provides for the transfer of certain permitting functions from the Department of Fish and Game to the Department of Natural Resources and the transfer of certain functions within the Department of Natural Resources.

The authority of Governor Frank Murkowski to issue EO 107 arises from art. III, sec. 23, Constitution of the State of Alaska. Article III, sec. 23, of the Alaska Constitution states:

Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

This executive order power of the governor is discussed in the Alaska Constitutional Convention Proceedings (pages 2226-2229) and it appears clear that the delegates viewed it as providing the governor the power, as an administrative matter, to reorganize the functions of the executive branch, but not to enlarge, diminish, or otherwise alter those functions.

The power of the governor to amend statutes as necessary to reorganize the executive branch is a legislative power that is conferred on the governor by the Alaska Constitution. The power to pass laws is conferred upon the legislature by the Alaska Constitution art. II, sec. 1 which states: "The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a

membership of forty." As a consequence of the doctrine of separation of powers which is inherent in the Alaska Constitution (Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975)), one branch of government is prohibited from encroaching upon and exercising the powers of another branch. The blending of governmental powers is permitted only to the extent granted by the constitution and will not be inferred. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). Just as the legislature's power over executive branch appointments is limited to the confirmation of certain appointments as expressly provided by the constitution (Id.), and just as the governor's power to veto appropriations made by the legislature is limited to that provided by the constitution (See, Alaska Legislative Council v. Knowles, 21 P.3d 687 (Alaska 2001)), the governor's executive order power is limited to that expressly set out in art. III, sec. 23. The governor's executive order power will be narrowly construed and will be confined within the bounds expressed in the constitution.

DISCUSSION AND SPECIFIC QUESTIONS.

You have asked a number of questions regarding the effect of EO 107 on the role of the Department of Fish and Game issuing permits for fishways (AS 16.05.840) and anadromous fish streams (AS 16.05.870). The best way to address your questions is to answer each one separately.

ONE: *Can the legislature amend EO 107 or can it only disapprove it?*

The legislature has only two options in regard to an executive order. Either the legislature accepts the executive order as the governor presented it, or the legislature may disapprove the executive order. The state constitution contains the requirement that disapproval of an executive order is accomplished ". . . by resolution concurred in by a majority of the members in joint session . . ." (Article III, Section 23) This must be complied with or any attempt by the legislature to disapprove an executive order will probably be held invalid by the court. The legislature has no power to amend an executive order directly, although it may seek to enact legislation that amends statutes affected by an executive order.

In addition to the procedure set out in the constitution, Uniform Rule 49(a)(4) provides

A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a standing committee of each house and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

TWO: *Will the Department of Fish and Game have any legal authority over what is now Title 16 permitting for anadromous fish streams under AS 16.05.870 or fishways under AS 16.05.840?*

Representative Paul Seaton

February 25, 2003

Page 3

EO 107 transfers all authority currently exercised by the commissioner of fish and game over permitting for anadromous fish streams and fishways to a newly created deputy commissioner of fish and game. The deputy commissioner of natural resources will exercise all of the authority formerly exercised by the commissioner of fish and game. The executive order does not expressly provide for any role for the Department of Fish and Game in the permitting process for anadromous fish streams or fishways.

THREE: Is there any legal responsibility for the Department of Natural Resources to ask for the opinion of the Department of Fish and Game on anadromous fish stream permits or fishway permits? Is the Department of Natural Resources under any legal obligation to follow recommendations of the Department of Fish and Game?

The answer to both questions is no. The Department of Natural Resources is not required to consult with the Department of Fish and Game regarding those permits. The Department of Fish and Game will still be able to provide its advice to the deputy commissioner of natural resources, regardless of whether it is solicited or not by the deputy commissioner, but the deputy commissioner is not required to follow that advice.

FOUR: Under the statutory changes made by EO 107, will the Department of Fish and Game have any legal responsibility for monitoring, enforcing, requiring compliance, and evaluating anadromous fish stream permits or fishway permits?

The answer is no. The statutory changes made by EO 107 repeals the permitting function for anadromous fish streams and fishways from AS 16. Once those provisions are removed from AS 16 the Department of Fish and Game is no longer responsible for monitoring, enforcing, or otherwise implementing those provisions unless the new provisions added to AS 41.14 authorize the department to provide those functions. The new statutory provisions regarding anadromous fish stream permits and fishway permits do not give any responsibility for implementing any of those provisions to the Department of Fish and Game.

FIVE: What is the role of the commissioner of natural resources in the issuance of anadromous fish stream permits and fishway permits under EO 107? The executive order appears to vest the deputy commissioner of natural resources with authority to issue the permits. Is this authority delegated to the deputy commissioner by the commissioner of natural resources?

The responsibility for issuance of anadromous fish stream permits and fishway permits is assigned by law to the deputy commissioner. There is no delegation of authority from the commissioner to the deputy commissioner. The commissioner is still the chief executive officer of the Department of Natural Resources and supervises the deputy commissioner of natural resources, however the deputy commissioner, not the commissioner, has the legal responsibility for issuing anadromous fish stream permits and fishway permits.

SIX: Under EO 107, what would be the appeals process for anadromous fish stream permits and fishway permits and how would it differ from the present process of the Department of Fish and Game?

An appeal of the decision of the commissioner of fish and game in regard to an application for an anadromous fish stream permit under AS 16.05.870 is subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 which provides for appeal procedures, a hearing before a hearing officer, and judicial review of the agency decision. An appeal of the decision of the deputy commissioner of natural resources in regard to an anadromous fish stream would also be subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630. Section 41 of the executive order provides that functions of the Department of Natural Resources relating to the protection of fish and game under AS 41.14.870 (anadromous fish stream permits) is subject to AS 44.62.330 - 44.62.630. The appeals process for anadromous fish stream permits is not changed by the executive order.

There are no formally established appeal procedures regarding fishway permits under AS 16.05.840. Appeals under AS 16.05.840 are not subject to the administrative adjudication provisions of AS 44.62.330 - 44.62.630 and the commissioner of fish and game has not adopted any regulation specifically relating to such appeals. Upon the transfer of responsibility for fishway permits to the Department of Natural Resources, the department may adopt appeals procedures that it considers necessary by regulation.

SEVEN: Will the Department of Natural Resources public notice requirements apply to anadromous fish stream permits and fishway permits issued by the department?

The new provisions regarding anadromous fish stream permits and fishway permits added by EO 107 do not require public notice of applications for or issuance of those permits.

The public notice provisions of AS 38.05.945 do not apply to anadromous fish-stream permits and fishway permits. However those permits could, through the enactment of separate legislation, be added to the list of items under AS 38.05.945 for which the Department of Natural Resources must provide public notice.

EIGHT: AS 16.05.870 says the Department Fish and Game must provide for "proper protection." Is there any legal definition for "proper protection"? If not, under EO 107 how will "proper protection" be defined?

There is no legal definition of "proper protection." Proper protection is whatever protection is appropriate under the circumstances. The commissioner of fish and game has never defined "proper protection", though the term is used in numerous fish and game statutes and regulations. The commissioner of fish and game determines what constitutes proper protection on a case by case basis. Under EO 107, the deputy commissioner of natural resources may exercise his/her discretion to determine what constitutes proper

protection in each case. The deputy commissioner may adopt regulations as necessary to define "proper protection" if he/she so chooses.

NINE: Under AS 16.05.840 a fishway must be provided only when the commissioner of fish and game determines that a fishway is necessary. Is there any legal standard defining "when it is necessary to provide for fish passage"? Under the statutory changes made by EO 107, will the determination of when it is necessary to provide for fish passage be exclusively within the discretion of the deputy commissioner of natural resources?

There is no standard for determining when "it is necessary to provide for fish passage" by requiring the establishment of a fishway. The commissioner of fish and game exercises his/her discretion in making that determination. Even if the commissioner makes the determination that a fishway would be necessary to provide for fish passage, the commissioner has the authority under AS 16.05.850 to waive the requirement for a fishway in favor of a hatchery if the cost of a fishway is too great. If EO 107 takes effect, then the deputy commissioner of natural resources will have the same discretion that is currently exercised by the commissioner of fish and game in regard to fishways around or over dams and other obstructions to fish passage.

TEN: When EO 107 takes effect, will the Department of Natural Resources have a broader mandate giving it permitting authority over all lands? If so is there a conflict legal or otherwise with the department's more limited mandate for state lands?

When EO 107 takes effect the Department of Natural Resources will be responsible for issuing anadromous fish stream permits and fishway permits. The requirements for these permits will apply throughout the state on state, private, and other government land¹. One of the major responsibilities of the Department of Natural Resources is for the management of state lands. There is no conflict between the responsibilities of the department for the management of state land and the regulation of private, state, or other government activities in the waters of the state. The legislature may assign any functions it considers appropriate to the Department of Natural Resources. Likewise, the governor by executive order may transfer any function currently assigned to another state agency to the Department of Natural Resources. There are virtually no constitutional limits on the types of functions that can be assigned to the department. If, for policy reasons, the legislature determines that the scope of the department should be limited to matters directly related to state land then it can limit the functions of the department accordingly by law.

¹ The applicability of these permit requirements to federal land depends on the nature of the federal land involved. In some cases, the state will not be able to require the federal government or its agents or contractors to comply with the permits if the requirements interferes with a federal program. The supremacy clause of the federal constitution protects the federal government from having to comply with state regulations that interfere with the mission of federal agencies.

ELEVEN: Will federal agencies have to go to the Department of Natural Resources for their in-stream permitting rather than the Department of Fish and Game?

To the extent that the federal government is subject to, or submits itself, to the state permitting process for anadromous fish streams and fishways, the federal government will have to apply for those permits through the Department of Natural Resources. The Department of Fish and Game will no longer have any responsibility for those permits after EO 107 takes effect.

TWELVE: Under EO 107 what happens to the due deference currently accorded to the Department of Fish and Game under AS 41.17 in regard to streamside buffer areas?

Under AS 41.17 (commonly referred to as the Forest Resources and Practices Act) buffer areas must be established around an anadromous water body on private land under AS 41.17.116, around an anadromous or high value resident fish water body on state land under AS 41.17.118, and around an anadromous or high value resident fish water body on state land not managed by either the Department of Natural Resources or the University of Alaska under AS 41.17.119. The Department of Fish and Game is responsible for cataloging anadromous fish streams and for identifying uncatalogued streams that exhibit evidence of anadromous fish. The Department of Fish and Game is also responsible for identifying water bodies containing high value resident fish.

Under AS 41.17.098(d) the commissioner of natural resources must give due deference to the Department of Fish and Game in regard to the effects of timber operations on fish habitat, including the effects of variations from the riparian standards established under AS 41.17.117 - .119.

When EO 107 takes effect, the expertise and views of the Department of Fish and Game are no longer entitled to deference under AS 41.17. Section 23 of the executive order provides that the deputy commissioner of natural resources is the expert on fish and wildlife habitat for purposes of AS 41.17. All deference formerly accorded to the Department of Fish and Game in regard to the effects of timber operations on fish habitat must now be accorded to the expertise of the deputy commissioner of natural resources.

THIRTEEN: Is the due deference currently accorded to the Department of Fish and Game under AS 41.17.098(d) equivalent to the authority of the Department of Fish and Game to issue anadromous fish stream permits and fishway permits?

Due deference accorded to the Department of Fish and Game under AS 41.17 is completely separate and distinct from the authority of the department to issue anadromous fish stream permits. The due deference requirement provides that the Department of Natural Resources is to defer to the advice given by the Department of Fish and Game in regard to the effect of timber operations on fish habitat. The due deference provisions give the Department of Fish and Game much more input into the

timber management process than does the anadromous fish stream permits. The anadromous fish stream permits relate mostly to activities occurring in the stream bed, while the due deference provision gives the department an opportunity to address activities occurring above the stream that may affect fish habitat.

FOURTEEN: Is the requirement for due deference to the expertise to the Department of Fish and Game more effective than providing an opportunity to review and consult?

The "due deference" provision gives the Department of Fish and Game a much more effective means to affect timber operations as necessary to protect fish and wildlife habitat than would the opportunity to consult. Under AS 41.17.098(e) and (f), "due deference" means that deference that is appropriate in the context of the agency's expertise and area of responsibility and all the evidence available to support a factual assertion. Where due deference is given, if the commissioner [of natural resources] does not agree with a commenting agency, the commissioner shall prepare a written statement of the reasons for the disagreement. . . . If a disagreement [between the agency and the commissioner] . . . exists, an officer of an agency may require reevaluation of the disagreement at a higher level within the agencies, or by the governor if necessary, before a decision is made by the commissioner."

An opportunity to consult would provide the Department of Fish and Game with the ability to provide advice and insight into fish and wildlife habitat issues, but the responsibility for matters affecting habitat would be made solely by the Department of Natural Resources.

FIFTEEN: Under EO 107 does the Department of Natural Resources have an obligation to give due deference to the Department of Fish and Game?

None of the provisions of the executive order provide that the Department of Natural Resources must give due deference to the Department of Fish and Game in regard to anadromous fish stream permits, fishway permits, or fish and wildlife habitat matters under AS 41.17.

* * *

There are two provisions of EO 107 where the governor appears to have exceeded his authority.

First, in sec. 5 of the executive order a new sec. 41.14.165 is added to provide that a peace officer may issue a citation for violations of the requirements of the fish passage and anadromous fish stream permits. Included in the new sec. 41.14.165 is a requirement that the Alaska Supreme Court shall determine which misdemeanors under the new AS 41.14 are appropriate for disposition without court appearance. Also included in that section is a requirement that the court establish an advisory committee consisting of certain members, including judges and the chairs of the House and Senate judiciary

committees. The governor's executive order authority is a limited authority to restructure the executive branch of state government. That authority does not allow the governor to place duties on either the legislative or judicial branch of government. In this case, both the Alaska Supreme Court and the legislature could completely ignore the requirements imposed by this section because the governor does not have the authority to impose any duty on them through an executive order.

Second, in sec. 45 of the executive order a provision is added to protect certain Department of Fish and Game employees from losing their "police officers retirement benefits" if they are transferred to the Department of Natural Resources by the order. This section does not involve a reorganization of functions of the executive branch. Instead, it relates to the retirement benefits accorded to state employees under law. No matter how well intentioned the purpose of this section may be, the governor does not have the power under an executive order to change laws regarding employee retirement benefits.

In both instances, the change the governor sought to make may be necessary and appropriate to fully achieve the intent of the executive order. However, the changes cannot be made in an executive order. In the event that the executive order does take effect, it would be advisable that the legislature enact these provisions in legislation so that there would be no legal uncertainties in regard to the duty of the Alaska Supreme Court in relating to bailable offenses and bail schedules for offenses under AS 41.14 and in regard to the status of retirement benefits for certain employees who are transferred to the Department of Natural Resources by the executive order.

* * *

EO 107 makes a number of technical conforming amendments to the numerous statutes that must be changed to conform to the transfer of responsibility from the commissioner of fish and game under AS 16.05.870 to the deputy commissioner of natural resources under AS 41.14.870. However, the executive order fails to amend two statutes that should be amended to eliminate soon to be obsolete references to AS 16.05.870. AS 46.15.035(c) and 46.15.037(c) provide for the reservation of a volume of water necessary to protect fish habitat in anadromous fish streams identified by the Department of Fish and Game under AS 16.05.870 when the state approves the transfer of water from one hydrologic unit to another, or when the state sells water from a hydrologic unit. Both of these statutes should be amended to replace the reference to "AS 16.05.870" with "AS 41.14.870". The executive order cannot be amended, so these changes must be made in a separate bill.

* * *

If I may be of further assistance, please advise.

GU:med
03-186.med

Subject: Conflict Resolution Chart, EO 107

Date: Fri, 11 Apr 2003 11:07:01 -0800

From: janet burleson <janet_burleson@dnr.state.ak.us>

To: Scott Ogan <senator_scott_ogan@legis.state.ak.us>,
Linda J Hay <linda_hay@legis.state.ak.us>,
Kim S Elton <senator_kim_elton@legis.state.ak.us>,
Ginny Austerman <ginny_austerman@legis.state.ak.us>,
Bruce Weyhrauch <representative_bruce_weyhrauch@legis.state.ak.us>

DNR needs to advise you of a correction to the Conflict Resolution Chart that DNR and Fish and Game distributed at the Senate Resource hearing and the House State Affairs hearing regarding EO 107. We also sent this correction to the House Fisheries Committee.

Please call if you have any questions.

CORRECTION

Please note that a correction needs to be made to the Conflict Resolution chart that was distributed at the Committee hearing. Under the existing framework, the Coastal Policy Council does not have jurisdiction over matters relating to FRPA. If there are any conflicts that must be resolved, the two commissioners must elevate the conflict to the Governor's office for final resolution - not the CPC.

Subject: Re: Dingle Johnson Funds

Date: Mon, 17 Mar 2003 16:53:52 -0900

From: Gordon J Williams <gordy_williams@fishgame.state.ak.us>

To: Ginny Austerman <Ginny_Austerman@Legis.state.ak.us>

CC: Kevin Brooks <kevin_brooks@fishgame.state.ak.us>

*Question asked
by Mike Milligan*

Hi Ginny,

No, there are no Dingle-Johnson (DJ) funds being transferred to DNR. The DJ funds received for habitat related work are being retained in Fish and Game for use on the habitat functions that will continue to be undertaken at the department. This is consistent with the current situation as GF is used for our permitting activities.

Gordy

Ginny Austerman wrote:

> Gordy:

>

> I hope you can answer a question that came up the other night at the
> State Affairs Hearing on the Habitat Division Transfer. Are Dingle
> Johnson Funds being used to pay for Habitat Division Activities? If so,
> is there a breakdown you can give me for the State Affairs Committee.

>

> Thanks,

> Ginny Austerman

20107

Subject: follow up info

Date: Tue, 11 Mar 2003 18:55:08 -0900

From: "Patricia Harris" <Pat.Harris@noaa.gov>

To: Representative_Bruce_Weyhrauch@legis.state.ak.us

CC: john hudson <jhudson@alaska.net>

Dear Representative Weyhrauch (Bruce),

Thank you again for taking time to meet with John Hudson, Jack Picolo, and me yesterday. I realize you are extremely busy as a new legislator and committee chair.

You expressed interest in the memo from regional habitat supervisors discussing the statements Governor Murkowski made regarding the habitat division's permitting record. These are attached for your information.

Also I have gotten new information regarding loss of federal funding resulting from the transfer of permitting authority from ADFG to ADNR that I would like to pass on to you. I was concerned that the state would lose the authority to review FERRC license applications because federal funds currently support that position in ADFG and there is no mechanism to transfer the funds to ADNR. I was told by the ADFG Habitat Regional Supervisor that the FERRC review responsibility will transfer to ADNR but not the funding. So the FERRC review will be done by an ADNR biologist, who will have it added to a workload that must also accommodate processing permits from the areas where field offices will be closed. The FERRC review position is currently a full time job so the attention given reviews will necessarily be diminished under ADNR. This is a small detail but points to what could be a serious impediment to speedy permit reviews. I apologize that I didn't have a full picture of the situation when we spoke yesterday.

You asked for suggestions that might make the transferring of permitting authority more workable and assure your constituents that habitat protection will not be shortchanged. I offer the following:

1. In some regions additional biologists will be needed at ADNR to handle permit review in an expedited manner. In Southeast, the three

follow up info

biologists transferred from ADFG will be expected to handle the volume they did at ADFG plus that of the closed field offices (an additional 4 FTEs) plus FERRC review.

2. Clarification of the role of the divisions remaining in ADFG is needed. ADFG biologists and the public need reassurance that the expertise of ADFG biologists will be available to and utilized by ADNR biologists.

Thanks you again for your kind attention. Although I am using my NMFS email to send you this message, my comments are strictly my own and do not reflect the position of NMFS or Auke Bay Laboratory.

Best Regards
Pat Harris

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Patricia Harris <pat.harris@noaa.gov>
zoologist
NMFS
Auke Bay Lab

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

333 Raspberry Road
Anchorage, AK 99518-1599
PHONE: (907) 267-2285
FAX: (907) 267-2464

MEMORANDUM

TO: Kerry Howard
Acting Director
Habitat and Restoration Division

FROM: Bill Hanson
Regional Supervisor
Region I
Habitat and Restoration Division

DATE: February 20, 2003

SUBJECT: Region I Response to Governor Murkowski's State of the State Address and Subsequent Press Conference Comments

During his State of the State address on January 23, 2003, and in a February 3, 2003 statewide press conference, Governor Murkowski cited several projects in the Southeast Alaska as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. The following information is presented to provide a more clear understanding of the Division's role in these projects.

The examples from H&R Region I include (1) the Juneau Golf Course; (2) Dorothy Lake Hydroelectric Project; (3) Ward Lake, and by association the Connell Lake Hydroelectric Project; (4) Falls Creek Hydroelectric Project; (5) the Ketchikan Southeast Intertie Project; and (6) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A brief summary of our response to each of these topics is provided below. More detailed explanations can be provided as needed.

In addition, in the February statewide news conference, Governor Murkowski stated that Habitat Division had sponsored a pizza party in Juneau to celebrate the closure of the Ketchikan Pulp Company mill in Ketchikan. Although we were certain that the Division had not and would not have sponsored such an event (and certainly what employees do on their own time is irrelevant), we have asked all of our staff as well as the former SE Regional Supervisor whether any such event took place inside or outside the workplace. No one has any idea what the Governor was referring to, and we can state categorically that this statement was erroneous.

In summary, we disagree that the Division of Habitat and Restoration has caused undue delays in projects. We believe that we have provided exceptionally efficient and professional service to the state, federal government, municipalities, applicants and the public. Our staff has provided a unique and useful combination of skills that unite:

- Implementing the mission of ADF&G to protect, enhance, maintain and extend fish and wildlife as well as protecting uses of these resources;
- Substantial experience and expertise in understanding the physical, economic and technical needs and limitations of diverse industries and applicants, including mining, timber harvest, municipal development, hydroelectric development, coastal development, transportation, road construction and many others;
- Identifying and understanding creative ways to allow development activities to proceed while protecting fish and wildlife and their uses;
- A detailed knowledge, gained by experience and fieldwork, of the landscapes across Alaska.

We recognize that it takes time, money and effort to fully evaluate and carefully consider the potential effects of development activities and the options for avoiding unnecessary damage. This can only be done with a strong commitment to listening to the needs of applicants and detailed knowledge gained by field review. ADF&G has been and continues to be fully committed to both.

Discussion of Specific Projects

JUNEAU GOLF COURSE – In the February 3 press conference, the governor said, *“I don’t know why we always start out with the Juneau Golf Course. But they’ve been trying since 1996 to get a conditional use permit granted to build a golf course. In 1998, after consulting with the Habitat Division, the Division of Governmental Coordination assented to the project. However, the Habitat’s field biologist kept reopening the process by alleging that new information was required. The project’s proponents have now spent more than one million dollars and I understand they still don’t have a conditional use permit.”*

H&R Region I Response -- Summary

The Totem Creek, Inc. (TCI) golf course project (the “Juneau Golf Course” to which the Governor refers) is proposed for undeveloped city-owned land in the Peterson Creek drainage, a cataloged anadromous watershed on North Douglas Island. Approximately 24 fish-bearing tributaries of Peterson Creek are within the project area. Peterson Creek provides habitat for a number of anadromous fish species, including pink, chum, and coho salmon, Dolly Varden char, and cutthroat trout. Currently, this watershed is in nearly pristine condition and provides excellent fishery and wildlife values. The watershed is also a popular deer hunting area.

ADF&G participated in the Alaska Coastal Management Program (ACMP) review of the golf course that resulted in issuance of a Consistency Determination (CD) on January 23, 1998. To address CBI and State concerns about the lack of information related to the project, TCI made a number of commitments to provide several additional documents for future planning and review. These commitments were incorporated into the project description of the CD, including future

development of a wildlife management plan, pest management plan (related to use of pesticides) and others. TCI, the CBJ and the agencies all knew that these additional materials would require review in the future. ADF&G issued a Title 16 Fish Habitat permit for 23 stream crossings in a timely fashion following issuance in 1998 of the ACMP Consistency Determination (CD).

Since 1998, ADF&G has participated in the next phase of the review: the issuance of the Conditional Use Permit (CUP), which is a City and Borough of Juneau (CBJ) requirement, not an ADF&G permit. ADF&G has been consulted by the City both as an expert agency and as a legal participant in the CBJ review process. As the recognized expert on fish and wildlife for the state, ADF&G provides such assistance on a daily basis to municipalities, other agencies, commercial businesses, and the general public.

The Governor's statement points toward "*the Habitat's biologist*" who "*kept reopening the process by alleging that new information was required.*" We strongly disagree. There was no subsequent "reopening" of the process. The Department of Fish and Game, not an individual biologist, continued to work with the CBJ and TCI. The 1998 ACMP review included commitments by TCI to provide additional planning and review documents prior to construction of the golf course. The CBJ added to these requirements during their CUP process. ADF&G has worked with both the City and the applicant to obtain and review the required information.

The original ACMP project description, which describes TCI's proposal, also included the following commitment:

"There would be 66-foot buffers on each side of ordinary high water on all tributaries of Peterson Creek."

Note that this applies to **all tributaries**, not just fish habitat. It describes the applicant's proposal, not ADF&G or ACMP requirements.

An additional stipulation proposed by ADF&G was included in the final CD:

"Sixty-six foot undisturbed stream buffers measured from the ordinary high water mark on each side of the stream, and in the condition they are found today, must be maintained along all fish streams other than at road and golf cart trail crossings."

Note that this is **less stringent** than the applicant's proposal as described in the project description, since it applies only to fish streams. It does not distinguish between anadromous and non-anadromous habitat. Like all applicants, TCI had the opportunity to discuss the description and stipulation in draft, as well as the opportunity to elevate the CD to the directors and commissioners if they disagreed with any portion of the CD. TCI did not object to the description or stipulation, nor did they elevate the ACMP CD.

In 2000, after two years in which no further documents or plans related to the golf course were submitted to ADF&G for review, TCI requested that ADF&G reissue the Fish Habitat Permits for stream crossings, and applied for a Conditional Use Permit from the CBJ. At this point, TCI objected to the 66-foot buffers on any streams other than 6 cataloged tributaries of Peterson Creek. TCI indicated that they had never intended to place such buffers on all streams or on all fish streams, despite the clear language in the CD. TCI contended that the CD inaccurately

portrayed the project and their commitments, but we have found no documentation that this is correct.

Given the disagreement between TCI and the state regarding the protection of fish habitat, ADF&G agreed to work with TCI to evaluate smaller buffers on streams affected by the project. ADF&G conducted a full survey of streams in the project area, identifying 17 additional anadromous waters that TCI had not identified as fish bearing in the original project review. After considerable discussion and negotiation, TCI redesigned the golf course to minimize effects on fish habitat, and ADF&G agreed to variable-width buffers that range from no standing trees at all to 66 feet, depending on specific stream characteristics and values. ADF&G, TCI and the CBJ signed a letter of agreement pertaining to these changes in September 2002.

This is a complex project located in an area with high fish and wildlife values. The need to address such issues as use of pesticides, protection of drinking water and water quality, wetland protection and windthrow, and other issues managed by a variety of federal and state agencies as well as the CBJ have required substantial time and effort, only a portion of which has been related to ADF&G's concerns for protection of fish, wildlife, and the users of these resources.

DOROTHY LAKE HYDROELECTRIC PROJECT – In the press conference, the governor said, *“The Dorothy Lake Hydro Project, which will provide electricity to southeastern Alaska, is being held up over the concerns about eastern brook trout, which was introduced in the 1920s. One of the functions of the Department of Fish and Game commissioner is to manage, protect, maintain, improve and extend the fish, game and aquatic plant resources of the state in the interest of the economy and the general well being of the state. This statutory requirement clearly envisions a balancing of public interest, such as those embodied in the Dorothy Lake hydro project. Further, there is no specific statute or regulation that says the Department of Fish and Game has to protect non-native species, although I personally feel that they certainly should. Requirements for instream flow, intake screens and minimum water depths, which go beyond reasonable measures needed to protect the state's legitimate interest, only serve to make the project uneconomical. From a personal experience point of view, I have observed the Ward Lake system in Ketchikan, where the third lake was dammed to accommodate the Ketchikan Pulp Mills in the late 60s or thereabout, and there's a significant flow of water goes out of that dam and down in the pulp mill. There are eastern brook trout in that system previous to this dam being built, and there are eastern brook trout today. And I don't know a lot about habitat biology, but I do know that they managed to survive and they're still there for the enjoyment for folks in Ketchikan.”*

H&R Region I Response - Summary

Lake Dorothy is a 4-mile long lake at 2400 feet elevation that spills down to Lieuy Lake, then Bart Lake and finally empties into Taku Inlet, 12 miles from Juneau. The applicant, Lake Dorothy Hydro, Inc. (LDHI), has proposed a hydroelectric project that would:

- Prevent Lake Dorothy brook trout from reaching their spawning habitat in some years.
- Allow brook trout to be entrained into the hydro facility's intakes, with potential high mortality;

- Seasonally remove all water from Lower Dorothy Creek between Bart Lake and Taku Inlet, eliminating an isolated population of brook trout

ADF&G has the duty to protect, maintain, enhance and extend fish and wildlife populations under the State Constitution, duties of the commissioner, and the Fishway Act (AS 16.05.840). These statutes also recognize that fish and wildlife values must be evaluated against other beneficial uses. ADF&G has always recognized that fish and wildlife and their users are only a portion of the beneficial uses that must be considered. Clearly, considerations such as the reduction in use of fossil fuels, economics and municipal needs for electricity are valid and important uses that must be considered as well.

The statutes do not differentiate between native species and non-native species (e.g. elk, bison, eastern brook trout, and rainbow trout) or species that have been extended into additional areas (e.g. black-tailed deer, coho, sockeye and Chinook salmon).

Under §10(j) of the Federal Power Act, Federal Energy Regulatory Commission (FERC) licensing statutes recognize the importance of state input, and give state fish and wildlife agencies such as ADF&G, along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, special authority to make recommendations for terms and conditions for power projects.

ADF&G approaches all projects, including FERC licenses, in a routine, organized manner that includes: 1) Identification and analysis of fish and wildlife values (including both populations and habitat) along with the users of these resources; 2) Determination of the protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility. (Note that although our staff are very experienced, and therefore able to ask pertinent questions and suggest possible alternative measures, we normally rely on the applicant for this information); and 4) Working with the applicant to identify and select appropriate and feasible mitigation actions to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

To obtain this information, FERC and resource agencies typically ask the applicant to conduct studies in order to assess environmental effects and to determine the resource protection, mitigation and enhancement measures. FERC must obtain adequate information on all aspects of the project, including effects on fish and wildlife and natural, cultural, recreational, and tribal resources, in order to perform its NEPA environmental analysis, to assess project economics and feasibility, and to carry out other regulatory responsibilities.

FERC also needs information from studies in order to make an informed decision as to the appropriate level and type of resource measures to include in licenses, and to ensure that their decisions are supported by substantial evidence. FERC recognizes that both state and federal agency expertise in fish and wildlife is critical to maintaining the credibility and success of the licensing process, and ensuring that the needed studies are scientifically and professionally designed. FERC regulations provide several means of dispute resolution if a dispute arises

between an applicant and a resource agency or Indian Tribe regarding the need to conduct studies or gather information.

At the time of the Governor's State of the State address, ADF&G and LDHI had completed steps 1 and 2 above, and we were in the process of working through steps 3 and 4. The entire timeline and schedule for FERC licensing is set in federal regulation. Delay of the project is not at the discretion of ADF&G or other reviewing agencies, and our recommendations are not intended in any way to block the project. ADF&G's comments to FERC were due on February 19th, and have been submitted.

As confirmed in LDHI's January 21, 2003 letter to Bill Hanson, H&R Regional Supervisor, ADF&G and LDHI have worked conscientiously and well to consider all aspects of this project and discuss various options for protection, economic feasibility and off- site mitigation.

The Governor's comments on this project suggest that parallels exist between the brook trout populations potentially affected by the Dorothy Lake project and brook trout in the Ward Lake system in Ketchikan. A comparison of the potential effects of a hydroelectric project on the Dorothy Lake brook trout population and the population in the Ward Lake system would not be valid. ADF&G Division of Sport Fisheries data indicate that brook trout in the Ward Lake system occur only in Perseverance Lake, the uppermost lake in the system, which is inaccessible to anadromous fish due to a natural barrier. Unlike Lake Dorothy, therefore, fish passage needed to maintain access to spawning habitat in Perseverance Lake was not put at risk by Connell Lake Dam, nor was the Perseverance Lake brook trout population ever affected by downstream water withdrawals associated with the this dam. However, Connell Lake Dam, which was built to provide water for the Ketchikan Pulp Company in 1953, prior to any requirement for a federal NEPA review and prior to the existence of ADF&G, currently blocks several miles of stream and lake habitat that previously supported coho salmon, sockeye salmon, and steelhead.

Falls Creek Hydroelectric Project – The governor said, *"The Habitat Division, together with the US Park Service, has also contributed to the delays in moving forward in the Falls Creek Hydro project near Gustavus. Unending demands for more studies have become a hallmark for the way this division oftentimes does business, and having had a personal opportunity to pursue a FERC waiver for that particular project, which obviously would reduce dependency of Glacier Bay of power generation from diesel power, why I could never understand why everybody didn't get behind this and recognize it as a considerable contribution to the environment."*

H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

FERC licenses are issued for a 50-year period. Such a long-term project, which can essentially be renewed forever, deserves careful consideration, including studies sufficient to fully evaluate the short and long-term effects on fish and wildlife populations and their users. This commitment to making decisions on the basis of science, which includes both studies and the best judgment of highly professional biologists, is a fundamental goal and task of ADF&G.

For the Falls Creek project, ADF&G, the US Fish and Wildlife Service and the National Marine Fisheries Service have completed steps 1 and 2 above. During our most recent discussions with the applicant, he indicated that an instream flow license requirement to maintain an isolated Dolly Varden char population in the bypass reach would make the project economically unfeasible. Instream flow requirements to sustain fish production are among the basic conditions required at hydroelectric projects. Nearly all projects in operation are required to maintain instream flows if sport or commercial fish species are present.

The applicant indicated that he would investigate alternatives for off-site mitigation in lieu of the instream flow reservation, but has not returned for any further discussions with ADF&G. ADF&G is simply waiting for his proposal.

The National Park Service (NPS), which is currently the landowner, and FERC are completing an environmental impact statement (EIS) on the proposed Falls Creek project. The project also involves a complicated land swap of Glacier Bay National Park and Preserve wilderness area for state land. Under the Federal Power Act (FPA), FERC is not allowed to license a project in a national park. Therefore, legislation was enacted to change the status of land ownership contingent on agreement that the project will not adversely impact the purposes and values of the park and preserve. The Falls Creek project area will become state land only if the project is acceptable for licensing by FERC. Conservation groups provided some support for the enabling trade legislation. However, several national and Alaska groups now oppose either this land trade or the project. Locally, two neighboring Native Allotments, the Bear Track Lodge, and the Hoonah Indian Association have intervened with FERC opposing the hydroelectric project.

ADF&G has not delayed this project. Rather, we are waiting for the applicant's proposal for off-site mitigation and will be asked to comment on the EIS.

Ketchikan Southeast Intertie – In the State of the State address, the governor mentioned the southeast intertie as an example of his statement that “*On many occasions, the Habitat Division has been the sole agency opposing and delaying legitimate projects important to the state.*”

H&R Region I Response - Summary

In no way did ADF&G oppose or delay this project. In our 1995 scoping comments to the Forest Service on the Tyee-Swan Lake Intertie (the Ketchikan Southeast Intertie to which the Governor refers), ADF&G sought clarification of the extent of road construction associated with the intertie project, which would construct a transmission line to connect the electrical systems serving Ketchikan, Wrangell, and Petersburg. Although road construction was included in several of the original scoping alternatives, the Alaska Energy Authority (AEA) originally proposed using helicopters instead of constructing a road. This was based on an independent feasibility study (completely unrelated to ADF&G) that concluded road construction would not be cost-effective. In our scoping comments, ADF&G indicated “...a helicopter constructed transmission line should not significantly affect fish habitat”. We also stated: “Construction of the transmission line only, in the absence of the road, would eliminate the majority of environmental impacts which would need to be considered in the EIS”.

The ADF&G review of the 1996 Draft EIS acknowledged clarification of the issue and stated the reduction in road construction “... has resulted in significantly fewer stream crossings, the avoidance of wetlands and other sensitive areas, less cumulative impact, fewer secondary impacts, and an overall reduction in fish and wildlife habitat losses.”

Following issuance of the FEIS, ADF&G did not provide any formal additional comments, but did indicate to DGC that the FEIS adequately addressed protection of fish and wildlife. ADF&G told a consultant for the Forest Service that right-of-way clearing would **not** require Fish Habitat permits, provided nothing (equipment, trees, brush, etc.) entered fish streams. The DGC Final Consistency Determination included standard conditions necessary to protect water quality by minimizing the introduction of sediments and petroleum products into streams.

Rather than delaying this project, ADF&G worked hard to ensure that it was reviewed and handled efficiently.

1996 Board of Forestry Report: The Governor’s statement that “*almost all of the allegations were proven to be unfounded*” is incorrect.

The Science and Technical Committee (S/TC) organized under the auspices of the Board of Forestry, and including both agency and industry representatives, evaluated the concerns raised by ADF&G in the 1996 Board of Forestry Report. The S/TC recommended that approximately 12 issues should be handled by staff training, monitoring, or informational pamphlets to timber operators, but did not require changes to the FRPA statutes or regulations, and that one issue, yarding corridors through riparian buffers, should be remanded back to the three resource agencies for further discussion and resolution.

The S/TC and S/TC Implementation Group further dealt with the remainder of the issues directly, with important recommendations (among others) for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources relating to the following topics:

- Requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- Ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- Removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- Recommendations for road construction in unstable or steep areas (Issue 3)
- Requiring a variation to remove trees within fish streams
- New definition of blockage to fish passage (Issues 6 and 16)
- Stream classification system and unclassified streams (Issue 17a)
- Improved slope stability standards encouraging retention of low-value and non-merchantable trees

Clearly, the concerns raised by ADF&G (which were not "allegations"), included many valid and important issues. The S/TC process was a difficult, but essential, means of handling these issues, and resulted in substantial improvements to the FRPA process.

cc: A. Ott, ADF&G
L. Trasky, ADF&G
E. Fritts, ADF&G

Frank Rue Carl Rosier Don Collinsworth Ron Skoog Jim Brooks
c/o 7083 Hendrickson Road
Juneau, AK 99801

January 30, 2003

Dear Governor Murkowski:

As former commissioners of the Alaska Department of Fish and Game, with a combined experience of over 30 years managing the department, we urge you not to move the statutory authority and responsibility to protect Alaska's salmon, trout, and other fish resources from the Department of Fish and Game (ADF&G) to the Department of Natural Resources (DNR).

We served under Republican, Democratic, and Independence party governors and we all agree that ADF&G must continue to be responsible for protecting the stream habitat of Alaska's salmon and trout. We share the belief that the loss of this authority will result in unnecessary and potentially irreversible harm to these resources that are critical to Alaska commercial, sport, and subsistence users.

At Alaska's Constitutional Convention in 1955, our founding fathers debated whether the new state should have one resource agency or two. They understood the need to develop our oil, mineral, and timber resources, and build the roads and highways needed to open up our vast state, and they recognized the need to balance that development with protection of fish and wildlife by purposefully giving the responsibility and authority to protect in-stream fish habitat to ADF&G.

The two resource agency approach provides for appropriate checks and balances in development decisions and it recognizes the importance and value of both our renewable and non-renewable resources.

When the first Alaska Legislature passed the statutes that define the basic responsibilities of state agencies, it agreed that habitat protection was best served as part of ADF&G's mandate to protect and manage fish and wildlife resources. This issue was debated again in 1989 when Alaska revised its Forest Practices Act. Again, the Legislature saw the wisdom in retaining ADF&G's authority to protect fish streams under the anadromous fish act (AS 16.05.870) and Alaska's fishway act (AS 16.05.840).

We understand your administration's goal of streamlining economic development, but feel the problem you are trying to fix is not rooted in ADF&G's implementation of its permitting authority. In fact, 2,000 "Title 16" permits are issued each year by ADF&G in an average time of just 15 days, with 99 percent of them approved. This achievement can be credited to a responsive, professional and experienced staff in the Habitat, Commercial Fisheries and Sport Fish divisions who have a long, laudable record of working collaboratively to maintain Alaska's fishery resources and the habitat on which they depend. We do not think it is possible to replicate this capability within another agency

and doing anything less will erode or destroy Alaska's capacity to aid development in ways that avoid or minimize threats to our fishery resources.

We know from experience that some would prefer not to worry about impacts of development on salmon, trout, and other fish. Life might be easier without having to ensure adequate culverts, bridges, and buffers around spawning streams, but this comes at a cost to those Alaskans who depend on fish for a job or a meal, and for whom the loss of fish habitat will mean an inevitable loss of opportunity.

Naturally, any regulatory agency has its critics, but if you think ADF&G is being unreasonably restrictive on a given project, you as Governor, or your commissioner of Fish and Game, have the authority to intervene. As commissioners, all of us have at various times taken such actions to ensure proper regulatory balance.

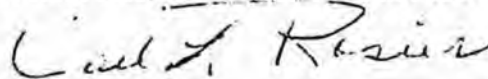
Since Alaska became a state 43 years ago, Alaskans have prided themselves on doing things differently than in the lower 48. In fact, Alaska's oil and gas, mining, transportation, and timber industries have done an outstanding job of developing their industries while at the same time, with the help of ADF&G, taking the prudent steps needed to protect our unsurpassed resources of salmon and trout.

You only have to look south to see how many salmon and trout runs have been destroyed or endangered by thoughtless development--the kind of careless development that will occur without ADF&G authority for in-stream permitting.

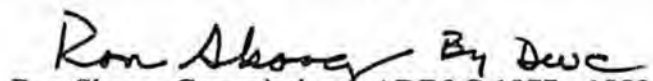
As we all look for new directions to grow our economy, we hope that Alaskans will continue to be able to enjoy the bounty of their fishery resources. We fear that sacrificing competent vigilance by ADF&G over critical fish habitat will lead to an unnecessary and tragic loss for all Alaskans.

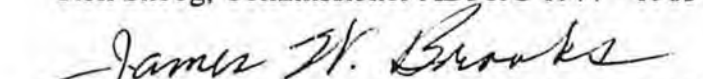
Sincerely,


Frank Rue, Commissioner ADF&G 1995 - 2002


Carl Rosier, Commissioner ADF&G 1991 - 1995


Don Collinsworth, Commissioner ADF&G 1983 - 1991


Ron Skoog, Commissioner ADF&G 1977 - 1983


Jim Brooks, Commissioner ADF&G 1972 - 1977

Celia Rozen
3711 Amber Bay Loop
Anchorage, Alaska 99515

February 26, 2003

MAR 05 2003

The Honorable Bruce Weyhrauch
House State Affairs Committee
State Capitol, Room 102
Juneau, AK 99801-1182

Dear Representative Weyhrauch:

As the chair of the House State Affairs Committee, I believe it is your obligation to assure that a meaningful hearing occurs on the merits of EO 107.

Separate authorities and missions empowered the Departments of Fish and Game and Natural Resources via legislative action at statehood. These mandates stemmed directly from the Alaska Constitution. Therefore, it is completely inappropriate for the executive branch to contravene existing law without legislative debate and consent. Approval via inaction by the legislature would be public policy at its most irresponsible and least accountable.

Such an important change in state government cannot be characterized by legislative inaction. Accordingly, a hearing needs to occur in which every member of your committee is thoroughly educated about the ramifications of this EO on the functioning of state government. The need for a special concurrent resolution needs to be seriously considered by your committee due to the problems with this EO – legal, procedural, substantive, public policy, and human resource problems, too numerous for one letter.

I believe legal challenges will be brought forward in the courts should this EO become law. As a lawmaker, you should not allow this flawed EO to go forward. The overwhelmingly negative reaction to this EO from the public should convince you that it is not in the best interests of this state. Please join in a special concurrent resolution within sixty days.

Sincerely,


Celia Rozen

Dear Representative Weyhrauch,

I am writing to express my concern about the impending transfer of fish habitat protection from ADF&G to DNR. Fisheries is the largest private employer in this state. As a fisheries professional, it is my opinion that habitat protection is the most important component of conserving our fisheries resources for future generations. It was the destruction of habitat, and not overfishing, that was the primary cause of the precipitous declines in salmon in the Pacific Northwest.

I find the governor's rationale for transferring and cutting staff inconsistent and illogical. He gives several examples of projects he thinks should have been permitted more rapidly. If the law prevents them from being permitted, why not change the law? If the staff are not implementing the law correctly, that's a personnel matter, not an organizational one.

Fish habitat should be assessed by experts with local knowledge. ADF&G's mission requires employing such people. I'm worried that as the current staff leave, their DNR-hired replacements won't have the same expertise and the same professional relationships with the local biologists. Please try and forestall this short-sighted reorganization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Milo Adkison', with a long horizontal line extending to the right.

Milo Adkison
1019 Edwin Place
Juneau, AK 99801
(907) 780-6330
kadmison@gri.net

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Gustavus, Alaska
March 9, 2003

Rep. Bruce Weyhrauch
Chair, House State Affairs Committee

MAR 11 2003

Dear Representative Weyhrauch:

I am writing to urge you to oppose transfer of the Habitat Division from the Department of Fish & Game to the Department of Natural Resources. I know that you personally are concerned about Alaska's fisheries and you have already in this session proposed legislation to benefit the salmon fisheries. I hope you recognize that maintenance of the Habitat Division within ADF&G is crucial to a future of abundant salmon in Alaska.

I am rather familiar with the Alaska Dept. of Fish & Game, and aware of the essential role played by the Habitat Division. I have also seen that the Dept. of Natural Resources has traditionally had far less concern for fish and game habitat. Instead, DNR has served as our natural resources development agency. As an example, in the 1980s DNR's Division of Forestry conducted timber sales on state lands northwest of Icy Bay (part of what is called the Yakataga Area), allowing a 13-mile clearcut with only one break along an ocean coast that has numerous cold streams and important wildlife habitat. Habitat protection requirements prescribed by ADF&G were frequently ignored by the DNR. Somewhat scandalized, in the late 1980s the Legislature mandated DNR to do an Area Plan for the Yakataga Area. DNR turned this task over to its Division of Forestry, and I know from listening to recordings of inter-agency meetings that the ADF&G Habitat Division had to fight tooth and nail for any habitat protections that were put into that plan. Moving the Habitat Division into DNR and reducing its staff of biologists will spell an end to meaningful checks and balances in the oversight of development projects in Alaska.

We cannot use the rhetoric of "doing development the right way" when we've essentially gotten rid of meaningful oversight. We are looking at developments that need careful study by biologists with a depth of knowledge about fisheries and wildlife. Governor Murkowski wants to build new roads. The Environmental Impacts section of the new Tongass Land Management Plan (TLMP) states that, "The greatest threat to the fish resource is caused by roads" (Chapter 3-64). The TLMP fisheries panel concluded that over time we will be looking at considerable risk to our salmon fisheries from timber harvest and roading (Ch. 3-56 to 3-65). Just in the matter of road culverts, a recent inter-agency study (ADF&G and U.S. Forest Service) concluded that 66% of the culverts on spawning streams are assumed to be inadequate for fish passage, and 85% of culverts on resident fish streams (non-spawning streams) are assumed inadequate (Tongass Road Condition Survey Report, June 2002, ADF&G Technical Report, Habitat & Restoration Div. #00-7). The landmark 1995 *Report to Congress: Anadromous Fish Habitat Assessment* (U.S. D.A. Forest Service) further describes concerns related to timber harvest programs. All of the above concerns have been stated with regard to the Tongass National Forest, on which stricter protections apply than on state and private lands.

In the past we have seen the muzzling of ADF&G and U.S. Forest Service biologists who were concerned about damage to habitat. A high profile case was the muzzling of the inter-agency committee that wrote the Viable Populations Strategy, a strategy required by the U.S. Forest Management Act. I suspect that with the few remaining Habitat biologists under the authority of the Commissioner of Natural Resources, the silence will be permanent.

I understand that the statistics do not back up allegations that the Habitat Division has

Dear Representative Weyhrauch,

I am writing to express my concern about the impending transfer of fish habitat protection from ADF&G to DNR. Fisheries is the largest private employer in this state. As a fisheries professional, it is my opinion that habitat protection is the most important component of conserving our fisheries resources for future generations. It was the destruction of habitat, and not overfishing, that was the primary cause of the precipitous declines in salmon in the Pacific Northwest.

I find the governor's rationale for transferring and cutting staff inconsistent and illogical. He gives several examples of projects he thinks should have been permitted more rapidly. If the law prevents them from being permitted, why not change the law? If the staff are not implementing the law correctly, that's a personnel matter, not an organizational one.

Fish habitat should be assessed by experts with local knowledge. ADF&G's mission requires employing such people. I'm worried that as the current staff leave, their DNR-hired replacements won't have the same expertise and the same professional relationships with the local biologists. Please try and forestall this short-sighted reorganization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Milo Adkison', followed by a long horizontal line extending to the right.

Milo Adkison
1019 Edwin Place
Juneau, AK 99801
(907) 780-6330
kadmison@gci.net



ALASKA CENTER *for the* ENVIRONMENT

807 G Street, Suite 100 • Anchorage, Alaska 99501

907-274-3621 phone • 907-271-8733 fax • acc@akcenter.org • www.akcenter.org

House State Affairs - Public Comments on Executive Order 107, March 11, 2003

Dear Committee members:

Representative Bruce Weyhrauch

Representative James Holm

Representative Nancy Dahlstrom

Representative Bob Lynn

Representative Paul Seaton

Representative Ethan Berkowitz

Representative Max Gruenberg

MAR 14 2003

Thank you for this opportunity to provide comment on Executive Order 107. I am here representing Alaska Center for the Environment, Alaska's largest home-grown public interest environmental organization with over 8,000 dues-paying members.

Checks and Balance

We recognize the need to develop our states resources but also identify the responsibility to conserve and protect the state's fish and wildlife resources. Alaska's economy and Alaskans depend on our unique fish and wildlife. Commercial and sport fishermen, hunters, trappers, hunting and fishing guides, subsistence users, and our tourism industry rely on healthy fish and wildlife. Fish and Game has the authority under the Fishway Act, Anadromous Fish Act and Forest Practices Act to manage the state's fish and wildlife resources through upholding proper stream buffers and approving suitable culverts for safe fish passage.

In order to fully comprehend and assess the impacts of the Governor's proposal, the missions of ADF&G and DNR need to be understood. They are very different. The Department of Fish & Game's mission is to protect and develop Alaska's fish and wildlife resources while DNR's mission is to promote development of the state's resources. These two missions balance each other providing a system of checks and balances and an opportunity for fish and wildlife biologists to work with developers through the permitting process. That is why the first state legislature created two separate resource agencies to manage the state's unique and diverse resources.

By moving the permitting authority one agency is given primacy in the process of checks and balances that have been set up to manage Alaska's fish and wildlife resources and resource development. We believe that if the permitting function is transferred to DNR, the balance will be tilted away from habitat protection to the long-term detriment of our fish and wildlife resources.

Substantive Change

The fundamental purpose of the Fish and Game Habitat division Title 16 permitting is to ensure free and efficient movement of fish and to protect the natural productivity of the aquatic life found in the streams. This authority has been in place since 1959, and applies equally to all persons, governmental agencies, and industries in Alaska.

Under the proposed EO, for the first time in Alaska's history, Fish and Game permitting and habitat protection will no longer reside in the Department of Fish and Game. Fish and Game will lose its authority, as the Habitat division will be eliminated, cutting 22 jobs and transferring 36 positions to DNR. This is far more than a process change; this is a major substantive and statutory change. The EO will change the standard of scrutiny. The system of checks and balance will be gone. There will be no need for DNR or industry to work out problems with ADF&G. The appeal process will be entirely through DNR.

Science vs. Politics

In recent years, a growing body of research in Alaska and the Pacific Northwest has documented the widespread impacts that poorly designed or installed culverts can have on fish passage and productivity. Experience has shown that the direct involvement of biologists knowledgeable about fish and fish habitat in the review of culvert designs and installation plans is the single most effective means of preventing fish passage problems. This gives biologists that ability and authority to respond to both individual environmental conditions and the needs of operators.

Only a small percentage of the streams that support spawning and rearing salmon and other anadromous fish have been identified in Alaska. Without review of plans and specifications, there is a substantial risk that many anadromous streams as well as resident fish streams may be blocked, and a significant amount of fish production lost, as has already occurred throughout the Pacific Northwest.

ADF&G staff are the state's experts on fish habitat and fish passage, including design, construction, and maintenance of culverts that simulate natural stream conditions and provide adequate passage for adult and juvenile fish. ADF&G has conducted research on the swimming capabilities of various species of fish in Alaska, and assessed the capability of hundreds of culverts to pass fish, on thousands of miles of forest roads in Alaska. Over the last ten years, we have learned that designing and installing culverts that will pass fish in the short term and also continue to pass fish over time requires applying knowledge of fish to individual conditions. Designs must take into account the swimming habits and abilities of the fish species present as well as site-specific hydrologic and hydraulic conditions such as stream gradient, velocity, substrate, and annual flow.

Governor Murkowski's plan prevents Fish and Game biologists from speaking up about the impacts on wildlife and fish habitat from industrial development. Under the super DNR, Fish and Game biologists and even the ADF&G Commissioner roles would only be advisory, with no power to prevent destruction of habitat. All decisions would be

made by DNR, the department responsible for resource development. The costs of this proposal are borne on backs of Alaska's fish and wildlife and the Alaska residents and businesses that depend on them.

Justification

The Murkowski Administration contends that the Habitat Division stands in the way of "legitimate projects" for personal reasons. When Governor Murkowski's examples and Habitat's permitting history is examined in detail, it is clear Habitat permitting is timely (especially in comparison to DNR) and the cited examples show how ADF&G is upholding the standards required to protect habitat under state law.

Permits are issued in a very timely manner when applicants provide ADF&G staff with the necessary basic information. Of nearly 2000 Title 16 permit applications received in FY02, 99.5% of the applications received permits or were told that no permit was required with an average of 14 days processing time. Currently DNR has a backlog of 700 water rights applications, 20 years old or older. 3000 miscellaneous applications, such as water rights transfers, have yet to be processed.

If there are problems with personnel and personal views and actions impeding projects, then this is a management situation and should be handled through proper discipline.

The facts relating to in-stream permitting don't point out a streamlining problem. Nor does it appear that moving Title 16 permitting to DNR will speed up the process. With less staff and less balance, it appears that proj proposals may well lead to litigation and more delays.

We urge the legislature to bring this issue to the House and Senate floors to be debated and we urge the legislature to support the resolution to disapprove Executive Order 107.

Thank you again for this opportunity to provide public comment.

Sincerely



Seth Little
Legislative Coordinator
Alaska Center for the Environment

MAR 17 2003

ALASKA HUNTERS UNITED
A Proud Voice for Conservation
PO Box 876485
Wasilla, Alaska 99687

March 10, 2003

Dear Fellow Wildlife and Hunting Advocate:

We would like to introduce ourselves—and to ask for your help. Alaska Hunters United: A Proud Voice for Conservation is a new organization of hunters whose focus is the conservation of wildlife and wildlife habitat. Our Guiding Principles are:

- Our fundamental priority is to ensure the long-term conservation of wildlife populations and their habitats in Alaska.
- We proudly recognize the vital role hunters have played in the conservation of wildlife and habitat in North America over the past 100 years.
- We support diverse opportunities for people to use and enjoy Alaska's wildlife consistent with sustained use.
- We support all methods and means of hunting that are safe, legal, and ethical, while recognizing cultural differences.
- We respect other wildlife values and uses and will build upon common ground with others.

Alaska Hunters United are very concerned about Governor Murkowski's Executive Order to **transfer the permitting authority and other responsibilities of the Alaska Department of Fish and Game's Habitat Division to the Department of Natural Resources**. Since statehood the responsibility for protecting Alaska's wildlife, fish, and habitat **throughout the state**, and the responsibility to develop timber, oil and gas, mining, and similar resources on **state-owned** land, have resided in separate agencies. When conflicts between these two missions have arisen, those conflicts have been resolved by elevating them to the agency heads and, if necessary, the governor.

Governor Murkowski's Executive Order **eliminates this essential check and balance**, and instead will allow all such decisions to be made solely by the Department of Natural Resources. We need development in Alaska -- development that occurs with reasonable protection of Alaska's legacy of healthy and resilient fish and wildlife populations. Alaska's fish and wildlife populations themselves provide important economic benefits to the state through commercial and sport fishing, hunting, and tourism, as well as priceless subsistence, recreational, and cultural benefits to Alaska's people.

Governor Murkowski's Executive Order 107 transfers ADFG's permitting authorities under the Anadromous Fish Act and the Fishway Act to DNR. Fish habitats will receive less protection. ADFG will no longer be reviewing logging plans and monitoring logging operations on private, state, and federal lands **Wildlife, fish and their habitats would be the inevitable casualties of such a transfer.**

Other changes are expected to occur independently of the EO. We understand that:

- Twenty-two Habitat Division employees will **lose their jobs**, 36 staff will be transferred to DNR, and 20 will be retained at ADFG. The staff remaining at ADFG will be dispersed into several divisions. Alaska will lose the benefit of years, and in some cases decades, of experience. With fewer employees, those remaining biologists will spend far less time in the field consulting with developers, providing field approval for projects, and checking on projects as they proceed.
- Fewer biologists means **permits will take more time to process, not less**. In fact, Habitat's permitting efficiency has been impressive: in 2002 the division reviewed almost 2000 Title 16 permit applications; the average time to process them was 14 days, and only nine were denied. On the other hand, DNR has a backlog of about 700 water rights applications, some of them pending for as long as 20 years.
- ADFG's involvement in state and federal land use planning will suffer. Currently the Habitat Division solicits and consolidates comments from throughout ADFG's diverse programs to ensure that ADFG communicates effectively with one voice. While ADFG might still comment on land management planning through area biologists in varying divisions, those divisions are already short on staffing and time, so ADFG's participation will be minimal and disjointed. Without the Habitat Division, ADFG will be a less effective player in planning efforts that have major, long-term implications for Alaska's fish and wildlife resources.

Many people have already spoken out against this proposal, including Governor Murkowski's own ADFG transition team, five former ADFG commissioners, the Alaska Fisheries Society, several commercial fishing organizations, and several advisory boards.

Executive Order 107 goes into effect on April 15 unless a majority of the legislature sitting in joint session **disapproves** the order. Presently, several legislative committees are holding hearings and Senator Elton and Representative Gara have introduced House and Senate Resolutions to override the Governor's Executive Order. We urge your group—and your members—to contact the following legislators and ask them to disapprove the Governor's Executive Order:

1. Attend the House Fisheries Committee **hearing** March 18th,
2. **Contact** "Important Committee Chairs or Other Leaders" (see next page), and
3. **Contact** your legislators and ask that they allow the resolutions to reach the House and Senate Floors for debate and passage.

Directions on how to contact your legislators and how to contact the Legislative Information Office in your area to participate in hearings are attached. If you're able to send us a copy of your letter we'll distribute it to other interested legislators.

Finally, if you'd like more information about Alaska Hunters United please don't hesitate to get in touch. Thanks.

Sincerely,

ROB HARDY *BY* *MEM*

Rob Hardy
Alaska Hunters United

Contacting your Legislators

The **best** way to communicate with the legislature is by letter, fax, or phone. Since many offices ignore emails, an email should be your last choice. The best legislators to target are: those who chair or sit on committees to whom the EO has been referred or who have expressed an interest in holding hearings; those with whom you already have a good relationship; and the leadership. We've provided contact information below:

The **address** for all legislators is:

Senator/Representative _____
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

The **email address** for all legislators is:

Senator/Representative_First Name_Last Name@legis.state.ak.us.

Important Committee Chairs or Other Leaders

Rep. Paul Seaton, Chair, House Special Committee on Fisheries (465-2689/ph); (465-3472/fax).

Rep. Bruce Weyrauch, Chair, House State Affairs (465-3744/ph); (465-2273/fax).

Sen. Kim Elton, Senate Resources (465-4947/ph); (465-2108/fax).

Senate President Gene Therriault (465-4797/ph); (465-3884/fax).

House Speaker Pete Kott (465-3777/ph); (465-2819/fax).

To find your legislators name

Through the **web**, <http://w3.legis.state.ak.us/legdist/23/legdist23.htm>

Call the Legislative Information Office in your town:

Anchorage, 269-0111

Barrow, 852-7111

Bethel, 543-3541

Cordova, 424-5461

Delta Jct, 895-4236

Dillingham, 842-5319

Fairbanks, 452-4448

Glennallen, 822-5588

Homer, 235-7878

Juneau, 465-4648

Kenai Peninsula, 283-2030

Ketchikan, 225-9675

Kodiak, 486-8116

Kotzebue, 442-3880

MatSu, 376-3704

Nome, 443-5555

Petersburg, 772-3741

Seward, 224-5066

Sitka, 747-6276

Tok, 883-5020

Valdez, 835-2111

Wrangell, 874-3013

ALASKA LONGLINE FISHERMEN'S ASSOCIATION
403 Lincoln Street, Ste. 237, Sitka, AK 99835

March 12, 2003

Dear Members of the Committee,

On behalf of the Alaska Longline Fishermen's Association, I wish to express our strong opposition to E.O. 107, the transfer of habitat permitting authority from the Department of Fish and Game (ADF&G) to the Department of Natural Resources.

As you may be aware, fisheries around the Nation have been dramatically curtailed and in some cases even closed due to poor stock condition. The socioeconomic implications of these closures have been extreme. Loss of habitat and habitat damage has played a major role in most of these fishery disasters. While some of Alaska's fisheries currently face marketing challenges, stocks are healthy and productive. Again, stock health is directly related to habitat health—although in Alaska's case, healthy habitat is the cause, not the culprit. Generations of Alaskan's have based coastal resource decisions on the importance of balancing development with long-term resource health. Given the importance of fisheries to Alaska's economy, the balance demands that fisheries habitat be carefully safeguarded. ADF&G has played that balancing role with remarkable success, and has received world-wide recognition for outstanding management of Alaska's fish stocks.

I expect the committee has received statistics on the effectiveness of Fish and Game's permit review process. The numbers that impressed our membership were that ADF&G processes on average 2,000 permits per year, and of those 99% are approved or granted in 15-17 days. Clearly the process is successful at protecting habitat, as well as facilitating careful development. In other words—there is absolutely no justification for transferring permitting authority away from ADF&G. The system is working.

In sum, while fisheries in other States have been curtailed or closed due to poor stock health, Alaska's fish stocks are healthy and productive. Resource disasters and successes can in many cases be directly traced to habitat health. ADF&G has done an exemplary job of balancing coastal development with habitat health, safeguarding Alaska's world class fish stocks while facilitating careful development. Transferring permitting authority away from ADF&G can only jeopardize this balance, and may sacrifice long-term resource productivity for short-term gains. Alaska economy, particularly Alaska's coastal economy, should not be placed in such jeopardy. On behalf of ALFA's approximately 100 members, I urge you to oppose E.O. 107.

Thank you for your time and attention. Sincerely,



Linda Behnken, director



Alaska Marine Conservation Council

Box 101145 • Anchorage, Alaska 99510

(907) 277-5357 • (fax) 277-5975

amcc@akmarine.org • www.akmarine.org

Alaska Marine Conservation Council
Testimony Re: Executive Order 107
March 11, 2003

Mr. Chairman, Committee Members,

Thank you for the opportunity to address you. For the record, my name is Paula Terrel and I am testifying on behalf of the Alaska Marine Conservation Council (AMCC). AMCC is a statewide organization with almost 1,000 members. Our members are fishermen, subsistence harvesters, marine scientists, conservationists, small business owners and others, all of whom are linked by a desire to protect and restore our ocean environment through sustainable fishing practices, habitat protection and local stewardship. Our board is comprised largely of commercial fishermen.

Alaska Marine Conservation Council opposes EO 107 which would move the Alaska Department of Fish and Game's (ADF&G) permitting functions to the Department of Natural Resources (DNR). There are only downside risks for fishermen from this move.

Some say there will be no change in protection because the statutes are not being changed. This does not offer much comfort. The fact remains that fishermen have looked to the Department of Fish and Game's Habitat Division for the protection of their fisheries and have benefited from the balance which is provided by having both the Department of Fish and Game and the Department of Natural Resources involved in resource decisions. The status quo initiated at statehood has served Alaska's fisheries well.

We believe there is one very large misconception regarding the definition of the problem. The DNR Commissioner and the Governor have said that the problem is with multiple permitting and not with the approximately 2000 single permits which the Habitat Division issues each year in an average of 15-17 days. This is the basis for a critical misunderstanding. The permitting functions under consideration for transfer to DNR relate to **instream issues, e.g. primarily salmon**, and these are almost always single permits which are issued. The Anadromous Fish Act and Fishway Act permitting functions, which are to be transferred under EO 107 do not appear to be the problem.

Rather, the problem people are referring to are **the big projects, most of which require multiple permits, often involving federal agencies, such Corps of Engineer, Fish and Wildlife, and other state agency approvals, etc.**

So, transferring ADF&G's Title 16 permitting authority to DNR does not address the problem of multiple permits.

We have several questions and urge this Committee to request the Administration's response:

1. Is EO 107 really addressing the problem that the Administration wants to resolve? If the problem that needs addressing is indeed multiple permitting, why is the Administration focusing on the instream permitting process which is almost always a single permit?
2. Would the DNR Deputy Commissioner continue the historical practice of the Fish and Game Commissioner to delegate the authority for making the initial permitting decisions to the habitat biologists? Would these decisions therefore become subject to the process for appeals to the DNR Commissioner?
3. Under EO 107, the DNR Deputy Commissioner would have broad discretion to interpret the Anadromous Fish Act. For example, the Deputy Commissioner would "determine the waters in the state that are **important** for the rearing, spawning, and migration of anadromous fish," and the DNR Deputy Commissioner would decide what constitutes "**important habitat**," and what constitutes "proper protection" for the rearing, spawning and migration of anadromous fish in "**important**" streams. Similar discretion is afforded under the Fishway Act. Given the differing mandates of the Department of Natural Resources and the Department of Fish and Game, what safeguards would prevent this discretion from becoming unduly conflicted or compromised because it would now reside with the DNR Deputy Commissioner?
4. The National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce has a similar structure as is being proposed by EO 107. For example, NOAA Fisheries is responsible for **both** the promotion of fisheries in federal waters and the protection of fisheries resources. This has caused increased litigation, introduced costly delays, and contributed to agency gridlock. How would DNR avoid similar problems?
5. Will the Administration implement the recommendation of the 38 member transition team which the Governor convened and which suggested that the decision to move the Habitat Division to DNR "...be deferred until the new Commissioner is in place and his/her HD Director have time to evaluate HD programs..."

The Governor and the Acting Commissioner of Fish and Game and the Commissioner of the Department of Natural Resources have assured the public on several occasions that "the same level of environmental protection will continue to be provided for Alaska's fish and wildlife." Under EO 107, the Habitat Division authority for issuing permits and for the monitoring, compliance and enforcement of these permits would now be the responsibility of DNR, but with fewer biologists.

At minimum, AMCC urges this committee and the Alaska Legislature to request the following commitments from the Administration:

- 1) A commitment by the Governor that the habitat biologists who are being transferred from the Alaska Department of Fish and Game would be "housed" in the newly formed Office of Habitat Management and Permitting;
- 2) A commitment by the Governor that, under this reorganization, the DNR Deputy Commissioner would delegate the authority for issuing and signing the Anadromous Fish Act and Fishway Act permits to the habitat biologists who have been transferred from Fish and Game.
- 3) A commitment by the Department of Natural Resources to require the State Forester to grant "due deference" under the Forest Practices Act to the Office of Habitat Management and Permitting on issues relating to the harvest of trees from within the 66 foot stream buffers on salmon streams on private land. The inclusion in the Forest Practices Act of this "due deference" to ADF&G was key to the fishing industry's support for the Forest Practices Act.
- 4) A commitment by the Department of Natural Resources that there would continue to be the same level of permit monitoring, compliance and enforcement as previously existed under ADF&G.

According to the Pacific Seafood Processing Association report, Impact of the Seafood Industry on Alaska's Economy "the commercial fishing and seafood processing industries accounted for approximately \$552 million in value added for 1999." The mining industry accounted for \$225 million, and the forestry industry accounted for \$179 million. The fishing industry is the largest private sector employer in Alaska. Governor Murkowski has indicated his intention to increase Alaska's resource production, including fisheries. It is imperative that increased timber and mining activities not occur to the detriment of fisheries.

AMCC concludes by restating its concern about the downside risks to fisheries of EO 107, and its opposition to the transfer of habitat permitting functions, and asks the Legislature and the Governor to ensure that Alaska's world renowned renewable fishing industry and the habitat upon which it depends is not compromised.

MAR 13 2003

Alaska Public Waters Coalition

10332 High Bluff
Eagle River, AK 99577
March 11, 2003

Rep. Weyrauch, Chair, House Committee of State Affairs

The Alaska Public Waters Coalition is comprised of organizations and individuals concerned about sound management of Alaska's public trust resources, which include water and fish and wildlife. Please add our name to the growing list of those opposed to the Governor's Executive Order 107.

From the information that has come to light so far, it is evident that the Governor has been the victim of poor staff work! The examples he cited of delay and wrong doing by the Division of Habitat have not stood up to scrutiny. Legislative committee files already contain sufficient testimony and documentation to convince anyone of this fact.

The thinking that went into crafting and enacting the Fish and Wildlife Coordination Act, the Anadromous Fish Act, and the Fishway Act should not be negated by such shallow and flawed thinking as that which produced EO 107. The record of the Habitat Division speaks for itself.

It is essential that your committee, and the others to which resolutions to reject this executive order has been assigned, promptly evaluate the facts and the public will and vote to pass the resolutions before the April deadline. Failure to do so will be a blot on this Legislature that will long be remembered.

Sincerely,

Keith Bayha, Chair